

Parish Law : ^c/_f

Lat. O R, A *Sketch* G U I D E

T O

Justices of the Peace, Ministers, Churchwardens,
Overseers of the Poor, Constables, Surveyors
of the Highways, Vestry-Clerks, and all
Others concern'd in Parish Business :

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James E. Smith
OF THE
C. L. I. D. E.

To the Honourable

ST JOHN FORTESCUE ALAND K
One of the Justices of the Majesty's Court of
Common Pleas.

21 R.

THIS Treatise is laid at
your Feet as a small
but publick Acknowledg-
ment of the many Oblig-
ations you have been pleas-

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Sir

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DEDICATION.

ed to confer upon me. It is not from the Vanity of Thinking, it can either contribute to your Instruction, or merit your Approbation. I know both you and myself too well ever to give into such Presumption; for who can write so well as you can judge? Few, if any, ever shone brighter in the Seat in which GOD and the King have so justly placed you; nor is it my single Opinion, since one of the most learned Bodies in *Europe*, by their late Diploma, have publickly confirmed my Sentiments. Not only the eminent Charges of the Kingdom which you have

DEDICATION.

have passed through, and the Figure you have made in them, intitles you to the just Esteem and Admiration of wise and good Men; but also the Social and Christian Virtues which you possess, and which you so carefully conceal from the Eyes of all the World, except from those who have the Honour and Happiness of attending near your Person, and who consequently have, as well as myself, an Opportunity of daily observing them, which I should here have taken an Occasion of particularizing, did I not know that by such a Publication I should as much offend

A 3 your

DEDICATION

your Modesty as I should
manifest the Truth; the
Fear of which obliges me
to end this Epistle, and to
subscribe myself,

Honourable Sir,

Your most humble,

Most obedient Servant,

Joseph Shaw.

TABLE

OF THE

NAMES of the CASES Referred to in this Work.

A.			Ch.	Ss.
A	Lderman Abdy's Case,	—	61	19
	Alinson v. Spence,	—	37	29
	—	—	37	68
	Alfop v. Bowtrell,	—	37	7
	All-Saints and St. Giles's Parishes,	—	39	11
	St. Andrew's Holbourn Parish,	—	37	65
	St. Andrew's Holbourn and St. Clement's Danes,	—	45	8
	St. Andrew's Undershaft Inhabitants v. Jacob Mendez de Breta,	—	50	8
	Anthony and Cardigan Parishes,	—	53	20
	Appoterce and Dunsfavel Parishes,	—	45	26
	Athley [Elizabeth's] Case,	—	45	10
	Austin's Case,	—	58	121
	Austin and Twine,	—	27	3
B.				
B	Abington v. Wood,	—	11	2
	Ball's Case,	—	53	67
	Ball v. Crofs,	—	1	15
	Bamber and Hannington Inhabitants,	—	33	
	Batts & al. v. Watkinson,	—	23	1
	Bedenham v. Kingston Bowsey,	—	36	6
	—	—	45	2
	—	—	45	20
	—	—	53	54
			Bellamy	

A TABLE of the Names of the Cases.

	Ch. Set.	
Bellamy and Babthorp,	—	3 10
Bennet v. Belfield,	—	35 22
Berry v. Goodman,	—	58 60
Bishop St. David's v. Lucy,	—	10 10
Bishop's Waltham v. Foran,	—	45 14
Bishop's Waltham and Fer Parish,	—	53 16
St. Botolph without Aldgate,	—	47 9
Boucher's Case, Cro. Jac. 81.	—	—
Bowber v. Panter,	—	37 8
Brabin and Tradum,	—	25 4
St. Bride's and St. Saviour's Parish,	—	35 29
—	—	53 3
Bridewell and Clerkenwell Inhabitants,	—	47 3
Britton v. Standish,	—	1 20
Broughton v. Mulshoe,	—	61 38
Brown's Case,	—	35 21
Buckingham and Levington Parishes,	—	53 39
Buckington v. St. Michael Sebington Inhabitants,	—	35 29
—	—	35 29
Budworth and Dumpy,	—	37 69
Burcleer and East Woodhay,	—	53 28
Burdeaux v. Dr. Lancaster,	—	25 19
Burwell's Case,	—	37 28
Butler and Baker's Case,	—	10 9
Byne v. Dodderidge	—	12 13
Bythorn Inhabitants and Bow,	—	25 48
C.		
South Cadbury and Braddon Inhabitants,	—	45 9
—	—	53 70
Carlton v. Hutton,	—	25 11
Castor and Aicles Inhabitants,	—	35 8
—	—	53 35
Chesterfield's Case,	—	53 9
—	—	53 35
Mayor of Chichester's Case,	—	50 24
Chalbury and Chipping Faringdon,	—	53 53
Chiddingfield v. Penhurst Inhabitants,	—	45 1
Chittinton and Penshurst Inhabitants,	—	45 11
Chorley Village's Case,	—	61 11
—	—	92 1
Christ's Hospital's Case,	—	45 25
Clark and Churchwardens of Cripplegate	—	46 10
—	—	46 21
Clark and Coggs,	—	58 93
Clypton and Ravistock,	—	45 28
Cockfield and Boxted Inhabitants,	—	53 58
		Colefatt

A TABLE of the Names of the Cafes.

Set.		Ch.	Set.
10	Colefatt v. Newcomb, — — —	13	7
22	Crawley's Cafe, — — —	61	17
60	Crowder's Cafe, — — —	61	28
10	Cuddington Parish's Cafe, — — —	37	74
14	Cumner and Milton Parishes, — — —	53	40
16	Curtis's Cafe, — — —	26	22
9			
	D.		
8	S T. David's Bishop v. Lucy, — — —	10	10
4	Dike v. Brown, — — —	12	6
29	Dimchurch and Eastchurch, — — —	50	19
3	Downhead and Broadchalk, — — —	45	51
3	Draper's Cafe, — — —	53	67
20	Duncomb's Cafe, — — —	58	72
38	Sir E. Duncomb's Cafe, — — —	58	121
21	Dunsfold and Ridgwick Parish, — — —	53	18
39	Dunsfold and Winborough Green, — — —	53	23
29			
29	E.		
69	Eaton Bridge Inhabitants and Westram, — — —	45	12
28	Evelin's Cafe, — — —	20	4
19	Evelin and Rentcomb, — — —	53	3
28	Exeter Dean and Chapter's Cafe, — — —	25	19
9			
13	F.		
48	Facey's Cafe, — — —	53	36
	Farringdon and Wilcot Parish, — — —	35	29
	Farringdon and Witty Parish, — — —	35	29
9	— — —	53	8
70	Fletcher v. Ingram, — — —	61	10
11	Foster's Cafe, — — —	61	49
8			
35	G.		
9	G Ayton and Milwich Parish, — — —	53	26
35	St. George Southwark and St. Margaret } — — —	37	1
24	Westminster, — — —		
53	— — —	37	7
1	Gerard's Cafe, — — —	53	67
11	St. Giles and Hackney Parish, — — —	53	3
11	St. Giles in Reading, and Eversley and Black- } — — —	44	6
1	water Parish, — — —		
25	— — —	53	38
10	Gilbert v. Fletcher, — — —	35	19
21	Goulston's Cafe, — — —	35	30
93	Grendon's Cafe, — — —	5	3
28			
58			
fatt			H.

A TABLE of the Names of the Cases.

H.			Ch.	Deb.
H Ains's Case,	—	—	16	3
Hal v. Flanner,	—	—	30	4
Hallet's Case,	—	—	58	120
Hammond's Case,	—	—	37	45
—	—	—	37	64
Hard's Case,	—	—	53	71
Hardington and Brisly Parish,	—	—	56	1
Dr. Haricot's Case,	—	—	2	4
Matfield and Totteridge,	—	—	47	6
Matfield and Totteridge,	—	—	1	11
Hatton's Case,	—	—	37	67
Hawkins and Rowse,	—	—	26	13
Hawksworth and Hilary,	—	—	33	14
Hawtree and Dee,	—	—	25	12
Helier's Case,	—	—	37	27
Hicks v. Woodson,	—	—	12	33
Hilton and Paul,	—	—	47	2
—	—	—	47	2
Hinckley and Stoke,	—	—	1	21
Hitchcot and Thornbury,	—	—	5	6
Honiton Parish's Case,	—	—	50	23
Honiton and St. Mary Axe Parish,	—	—	39	11
Horn and Taylor,	—	—	58	94

J.			Ch.	Deb.
J acob v. Dallow,	—	—	23	5
Jeffrey's Case,	—	—	26	32
Jenkins's Case,	—	—	45	23
St. John Baptist Inhabitants in Devizes v. Inhabitants St. James Bishops Cannings,	—	—	35	29
St. John in Hertford and Ampthill,	—	—	53	32
Johnson's Case,	—	—	45	6
—	—	—	53	59
Jones and Harwood,	—	—	58	124
Jones v. Lawrence,	—	—	11	1
Ivinghoe and Solebury,	—	—	53	27

K.			Ch.	Deb.
K ilbeck's Case,	—	—	45	2
King's Langley Parish,	—	—	45	21
King's Langley Inhabitants v. St. Peter's in St. Alban's Inhabitants,	—	—	36	5
—	—	—	36	5
King's Norton Inhabitants and Swoln-Hill,	—	—	45	6
Kingston Bowsey Inhabitants and Bedenham,	—	—	45	2
—	—	—	45	20

L.

A TABLE of the Names of the Cases.

L.

Ch. Sect.

Add v. Widows,	—	—	13	7
St. Lawrence and St. Mary's Reading Parish,	—	—	53	43
St. Leonard Shoreditch and Trinity Parish,	—	—	35	29
Linnehouse Inhabitants,	—	—	50	11
Little Kire and Woolfart Parish,	—	—	39	10
Lucas's Case,	—	—	51	9

M.

Alden and Fletwick Inhabitants,	—	—	45	9
Masham Churchwardens v. Watkinson,	—	—	17	5
Meadhouse and Taylor,	—	—	12	15
Mendoza's Case,	—	—	45	13
St. Michael Bedenham and Kingston Bowfey,	—	—	53	54
Monk and Lucas,	—	—	46	21

N.

Naylor qui tam v. Scot,	—	—	12	34
Newbury Parish,	—	—	35	30
Newington Butts Parish,	—	—	59	27
St. Nicholas Inhabitants and Killington Parish,	—	—	37	66
Nichols v. Walker & al,	—	—	47	6
Northbury and Shugford Parish,	—	—	45	1

O.

Ophington Churchwardens,	—	—	22	5
St. Olave and Alhallows on the Wall Parish,	—	—	35	29
—	—	—	53	48
St. Olave's Jury Parish,	—	—	35	30
Ordenham and Henden Parish,	—	—	53	25
Oswell Inhabitants and Woking,	—	—	45	5
—	—	—	45	14

P.

Arker and Welstead,	—	—	58	93
Peckham's Case,	—	—	46	19
Pense and Prowse,	—	—	26	1
Perry v. Banks,	—	—	1	4
St. Peter and St. Mary Marlborough,	—	—	45	26
Peterborough Inhabitants,	—	—	46	22
Philips v. Winchcomb,	—	—	61	17
Phyllibrown v. Ryland,	—	—	17	2
Picard v. Bishop of Ely.	—	—	29	13
Pridgeon's Case,	—	—	37	45
Priafon's Case,	—	—	30	14

R.

A TABLE of the Names of the Cases

R.

Ch. Sect.

R AD v. Forster,	—	—	46	7
Reading Borough,	—	—	53	43
Reddish's Case,	—	—	50	22
Reg. v. Aberford Inhabitants,	—	—	50	12
Rex v. Alberton,	—	—	37	1
— v. Armstrong,	—	—	37	65
— v. Atkins,	—	—	37	26
— v. Aynhoe Inhabitants,	—	—	53	18
— v. Baker,	—	—	37	46
— v. Barebaker,	—	—	37	28
— v. Barnard,	—	—	37	67
Reg. v. Barking Inhabitants,	—	—	61	11
— v. Benoner,	—	—	50	2
— v. Boniface,	—	—	44	4
— v. Boughton Inhabitants,	—	—	37	29
— v. Brown,	—	—	45	10
— v. Duchefs Buccleugh & al',	—	—	37	13
Rex v. Buckingham Inhabitants,	—	—	46	23
Reg. v. Sir John Bucknall,	—	—	60	13
— v. Cash,	—	—	53	36
Rex v. Chandler,	—	—	60	4
— v. Channel,	—	—	37	72
— v. Chilmarton Inhabitants,	—	—	61	39
— v. Cirencester Inhabitants,	—	—	35	23
— v. Cluworth,	—	—	46	25
Rex v. Collingbourn,	—	—	35	29
Reg. v. Chattey,	—	—	53	48
— v. Collins,	—	—	58	85
Reg. v. Cotton,	—	—	35	24
Rex v. Coyston,	—	—	37	29
— v. Disney,	—	—	37	31
— v. Dobbyn,	—	—	37	26
— v. Fairfax,	—	—	37	59
Reg. v. St. Giles,	—	—	37	46
Rex v. Gleg,	—	—	37	49
— v. Godfrey,	—	—	53	37
— v. Grat,	—	—	45	10
— v. Grisly,	—	—	35	22
— v. Hammond,	—	—	36	4
— v. Hartfield Inhabitants,	—	—	61	19
— v. Hartfield Inhabitants,	—	—	37	74
— v. Hartfield Inhabitants,	—	—	40	2
— v. Hartfield Inhabitants,	—	—	50	17
— v. Hartfield Inhabitants,	—	—	37	47
— v. Hartfield Inhabitants,	—	—	37	70
— v. Hartfield Inhabitants,	—	—	45	14

Rex

A TABLE of the Names of the Cases.

Sett.						Cb. Sett.
7	Rex v. Harwood,	—	—	—	20	5
43	— v. Hill,	—	—	—	37	28
22	—	—	—	—	37	57
12	Reg. v. Hodges,	—	—	—	46	15
1	Rex v. Hollinsworth,	—	—	—	56	1
65	—	—	—	—	91	10
26	— v. Humming,	—	—	—	46	24
18	Reg. v. Jeffreys,	—	—	—	37	73
46	Rex v. Jenkins,	—	—	—	37	57
28	— v. St. John's Parishioners,	—	—	—	35	29
67	— v. Johnson,	—	—	—	35	18
11	— v. Ilrip Inhabitants,	—	—	—	53	30
2	Reg. v. Kimberty,	—	—	—	37	65
4	— v. Kime,	—	—	—	58	22
29	—	—	—	—	—	71
10	— v. Knott,	—	—	—	37	59
13	— v. Langley,	—	—	—	33	32
23	— v. Langley and Goring,	—	—	—	45	1
13	—	—	—	—	45	2
36	— v. Linter,	—	—	—	37	27
4	— v. Littleport Parish,	—	—	—	46	10
72	Rex v. Sir Richard Lucy,	—	—	—	58	12
39	— v. Manley,	—	—	—	37	68
23	— v. Marlborough Inhabitants,	—	—	—	45	4
25	— v. St. Mary's Marlborough,	—	—	—	50	18
29	— v. Matthews,	—	—	—	37	28
48	—	—	—	—	37	67
85	—	—	—	—	37	70
24	— v. May,	—	—	—	40	2
29	— v. Mile-End Inhabitants,	—	—	—	58	120
31	Reg. v. Murrey,	—	—	—	37	7
6	— v. Nelson,	—	—	—	37	28
9	—	—	—	—	37	70
6	— v. Newington Inhabitants,	—	—	—	58	70
9	—	—	—	—	59	26
7	— v. Newnham Inhabitants,	—	—	—	45	2
0	— v. Odam,	—	—	—	37	28
2	— v. Ogden,	—	—	—	46	10
4	—	—	—	—	46	21
9	—	—	—	—	58	105
4	— v. Paine,	—	—	—	53	34
2	— v. Parkasse,	—	—	—	37	49
7	— v. Payne,	—	—	—	40	2
7	— v. Peck,	—	—	—	46	24
5	— v. St. Peter's in York Justices,	—	—	—	60	3
4	— v. Redding,	—	—	—	37	29

Reg.

A TABLE of the Names of the Cases.

	Ch.	Se.
Reg. v. Ridge,	37	72
— v. Rislip Inhabitants,	45	20
— v. Rotherhith Churchwardens,	53	54
— v. Saunders,	46	11
— v. Sennings,	58	122
— v. Sharp,	37	8
—	37	8
—	37	27
—	37	29
— v. Shaw,	37	67
— v. Sheringbrook,	46	2
— v. Shoreditch,	58	120
— v. Smith,	37	34
—	37	47
— v. Spitalfields Hamlet,	44	6
—	53	39
— v. Stevens,	61	19
— v. Street and Strand,	23	9
— v. Stretford Inhabitants,	58	9
Rex v. Trinity Parish, Chester,	51	6
Reg. v. Taylor,	35	24
— v. Tenant,	37	47
— v. Terry,	37	28
— v. Trig,	61	19
— v. Utoxeter Inhabitants,	50	27
— v. Wangford Inhabitants,	53	6
—	53	49
— v. Watton,	58	8
— v. West,	37	20
—	37	44
— v. Weston,	37	28
—	37	29
—	37	44
— v. White,	20	5
—	61	11
— v. Whiten,	39	10
— v. Wigg,	59	8
— v. Wilby Parishioners,	51	3
— v. Wilts County,	59	5
— v. Wooten-Rivers Inhabitants,	45	1
— v. Wyat,	37	12
Rickerfworth and St. Giles's,	53	40
Reynold's Case,	22	5
Reynolson v. Blake and Bishop of London,	29	13
Rice's Case,	20	5
Richards v. Hodges,	37	28
Rudwick and Cheddingford,	53	18
Rufford,		

A TABLE of the Names of the Cases.

	Ch. Sect.
Rufford,	47 8
Ryflip and Harrow,	53 3
S.	
Alter v. Brown,	37 8
Great Sanke, Barton and Clifow,	53 16
Savage v. Wood,	12 19
St. Saviour's Parish,	17 2
	26 32
St. Saviour's and St. Dionis Back Church,	53 27
Saul v. Wood,	14 3
Scoles v. Lowther,	12 33
Scudamore's Cafe,	12 16
Sedgemore and Dulleton,	53 43
Selen and Ripley,	45 7
Seyman's Cafe,	61 30
Shadwell Inhabitants,	61 29
Shapcott v. Mugford,	11 4
Sherman's Cafe,	37 28
	37 28
Shillingford and Cockswell,	56 6
Shoreditch Parish,	50 12
Slate's Cafe,	37 4
Slater's Cafe,	37 49
Smith's Cafe,	37 45
Smith v. Shepherd,	58 95
South-Cadbury Inhabitants and Braddon Parish,	45 9
Spitalfields Hamlet v. St. Andrew's Holbourn,	37 65
Stanrode v. Bampton,	51 8
Stokejane and Doffin Parishes,	53 25
Sir N. Stoughton's Cafe,	58 121
Prior of Stratford's Cafe,	60 17
Stretton and Brown,	61 55
Suddlecomb and Burwath,	45 7
Swain and Carter,	11 3
Swancomb and Shensfield,	45 8
	45 14
	45 20
	53 54
T.	
Alborn and Boston,	53 68
Taverner v. Quatermain,	46 21
Tawney's Cafe,	46 11
	50 20
	50 20
Tewkesbury v. Twining,	51 7
	Theed

A TABLE of the Names of the Cases.

			Ch.	Sec.
Theed v. Starkey,	_____	_____	50	15
Thornton and Pickering,	_____	_____	37	8
Thursley Parish,	_____	_____	53	15
Topsham Churchwardens,	_____	_____	46	24
Tracy v. Talbot,	_____	_____	50	14
Trowbridge and Weston Parish,	_____	_____	44	6
_____	_____	_____	45	3

U.

U Ffington Churchwardens,	_____	_____	1	24
---------------------------	-------	-------	---	----

W.

W Alker v. Carter,	_____	_____	47	7
Walter and Rumbal,	_____	_____	45	1
Waltham v. Sparkes,	_____	_____	44	4
Walton and Chesterfield Parish,	_____	_____	45	2
Wangford and Brandon Parish,	_____	_____	53	49
_____	_____	_____	92	10
Wanstead High Constable's Case,	_____	_____	61	30
Ware and Hampstead,	_____	_____	45	7
Ware Inhabitants and Stanstead Mountfitchet,	_____	_____	53	60
Warner's Case,	_____	_____	20	4
Watkins v. Edwards,	_____	_____	35	24
Watson and Baker,	_____	_____	11	2
Webb v. Batchellor,	_____	_____	58	9
Webber v. Bury,	_____	_____	37	7
Weedon v. Walker,	_____	_____	47	7
Westbury,	_____	_____	36	4
Westbury v. Costham Inhabitants,	_____	_____	44	2
_____	_____	_____	51	5
_____	_____	_____	53	2
Westbury v. Coston Parish,	_____	_____	37	66
Westwoodhay v. Shellingham,	_____	_____	45	30
Whitechapel Parish,	_____	_____	44	6
_____	_____	_____	53	38
_____	_____	_____	53	39
Wilson v. Dodd,	_____	_____	92	6
Wintel v. Child,	_____	_____	14	5
Witherington and Henden,	_____	_____	12	7
Woodend Inhabitants v. Paulspury,	_____	_____	44	8
Wood's Case,	_____	_____	37	66
_____	_____	_____	44	2
Wright's Case,	_____	_____	38	2

Parish

Parish Law.

CHAP. I.

Of the Original and Institution of Churches and Parishes in general.

1. **B** EING to treat of Parish Officers, it may not seem improper to premise a few Things concerning Parishes themselves.

2. A little before our Blessed Saviour's Ascension, he gave his Apostles Commission to go and teach all Nations, baptizing them in the Name of the Father, Son, and Holy Ghost, &c. which they immediately began, God assisting them with many Signs and Miracles. But we do not read in Sacred Writ, that at the first Propagation of Christianity, there were any fixed or determinate Boundaries for the Apostles to exercise their Sacred Function in; though we read in Scripture, that St. Paul himself constituted Timothy Bishop at Ephesus, and Titus at Crete.

3. In like Manner was there also a Bishop at Rome, which, at that Time, was the chief Seat of the Roman Empire; and the Number of Christians increasing, as the Romans had in large Cities a *Præfatus Prætorii*, and in lesser Cities a *Vicarius Præfatus Prætorii*, it was thought proper to settle a Bishop in every City, who was Superintendant over the Affairs of the Church, not only within the Walls of the City, but in the Vills and District thereto belonging.

4. But the Number of Christians still augmenting, the Bishop alone was not able to sustain so great a Weight, Presbyters therefore were ordained to assist him; and Numbers of Converts being daily made, so that one Church could not suffice them, it became necessary to build more, especially in the Country; and one chief Business of the Presbyters was, by the Bishop's Direction, to go and officiate at those lesser

No Churches in the Beginning of Christianity.

In what Places Bishops were first settled.

Presbyters ordained.

B

Churches,

All Church
Dues paid into
a common
Treasury.
How divided.

Churches, though they constantly resided at the head Church; and all Oblations, and other Church Dues, were paid into a common Treasury, and by the Bishop, or the Deacons by his Direction, divided into four Parts, *viz.* one Part to the Maintenance of the Ministry, another to the Poor, another to the Reparation of Churches, and a fourth to the Bishop himself. But this quadripartite Division, the learned Mr. Selden tells us, was chiefly in the Diocese of *Rome*; for by some Canons of the *French, Spanish,* and some other Churches, it was tripartite, and had other Differences. Hence our Cathedral Churches seem to have taken their Original.

Parochia and
Diocesis Terms
synonymous.

5. In those Days *Parochia* or *Paræchia* and *Diocesis* were synonymous Terms, as appears both by *Eusebius* and *Epiphanius*; and this may be the Reason why in some of the Northern Parts of *Germany*, and even in *Holland*, where I could never find there were any settled Division of Parishes before the Reformation, the Bishop claimed all the Tithes throughout the whole Diocese.

The Beginning
of Parishes.

6. But in Process of Time, the Work growing too great for the City Presbyters, who were little more than the Bishop's Curates, or Messengers sent by him, it was thought proper by the Bishops to settle distinct Presbyters and Priests in those other Villages and Towns within their Dioceses, and to limit the Boundaries thereof, which were called Parishes.

No Parish in
England for the
first 500 Years
after Christ.

7. But here in *England*, for the first 500 Years after Christ, there were no particular Parishes, the Bishop having the Government of the whole Diocese, and the Revenue being paid into his Treasury, as aforesaid. But when Christianity began to spread, by Conversion of the *Saxons* from Idolatry, many Churches were built by Bishops, and some by Laymen; but the Bishops always settled the Endowment, (which was sometimes done by reserving a certain Portion of the Profits which before were paid into the Treasury of his Diocese) and annexed it to those Churches, for the Maintenance of the Priests who officiated therein; which Portion thus reserved, was to arise within certain Limits set out likewise by the Bishop himself for that Purpose; and this was done at the Dedication of the Church to some Saint.

Patronum faciunt Dos, Edificatio, Fundus.

The Beginning
of Patronage.

8. But when a Church was built by a Layman, for the Convenience of himself and his Tenants, and by the Bishop's Appointment had a Minister settled among them, no Church could be legally consecrated without the Allotment of a Manse, or House and Glebe, generally made by the Lord of the Manor, who thereby became Patron of the Church. Other Persons, at the Time of Dedication, often contributed small Portions of Ground; which is the Reason why, in many Pa-

ishes,

ishes, the Glebe is not only distant from the Manor, but lies in remote divided Parcels.

9. The Lords of Manors, at their first building of Churches, did often allot no more than one third Part of Tithes for an Exhibition to the Parish Priest, and kept the other two Parts in their own Hands, for the Uses of the Church and Poor; till by Degrees they either gave in the two other Parts to the Parochial Priest, or else, with the Bishop's Consent, assigned them to some Religious House.

10. And by the Laws of King *Edgar*, made about 670, if a Thane or Lord should have within his own Fee a Church with a Burial-Place, *i. e.* a Parish Church, he must give the third Part of his Tithe to it. But if it had no Privilege of Burial, *i. e.* if it were only a Chapel of Ease, depending on a Mother-Church, then the Lord was to maintain the Priest out of his nine Parts.

11. As to the first Institution of Parishes here in *England*, many of our Writers have ascribed it to *Honorius* Archbishop of *Canterbury*, *An.* 622, or as others say, 636, in the Reign of King *Edwyn*. Parishes when first in England.

12. This is asserted by Archbishop *Parker*, Mr. *Camden*, and by Bishop *Godwyn*, who wrote the Life of the said *Honorius*; and to this Opinion, that learned Antiquary Sir *Henry Spelman* seems to lean; though he confesses that very few Authors take Notice of those small Parishes in those Ages, for the whole Diocese was then comprehended by the Word *Parochia*. But Mr. *Selden* affirms, that there were no Parochial Churches here in St. *Augustin's* Time, nor for above one hundred Years afterwards, which was long after *Honorius's* Death.

13. But Bishop *Kennet*, in his *Parochial Antiquities*, p. 586, seems to have set this Matter in the justest and the truest Light, where he tells us, that Mr. *Selden* seems rightly to understand the Expression, (*Provinciam suam in Parochias divisit*) of dividing his Province into new Dioceses; and this Sense is justified by the Author of *The Defence of Pluralities*. The like Distinction of Parishes which now obtains, says he, could never be the Model of *Honorius*, nor the Work of any one Age. Some rural Churches there were, and some Limits prescribed for the Rights and Profits of them. But the Reduction of the whole Country into the same formal Limitations, as it could not well be done at once, so was it gradually advanced, being the Result of many Generations. However, at the first Foundation of Parochial Churches, (owing sometimes to the sole Piety of the Bishop, but generally to the Lord of the Manor) they were but few, and consequently at a great Distance; so, as the Number of Parishes depending on that of Churches, the Parochial Bounds were at first much larger, and

Parishes in England not instituted first by *Honorius*.

How they first began.

and by Degrees contracted; for as the Country grew more populous, and the People were more devout, several other Churches were founded within the Extent of the former; and then a new Parochial Circuit was allotted, in Proportion to the new Church, and the Manor or Estate of the Founder of it. Thus certainly, says he, began the Increase of Parishes, when one too large and diffuse for the Resort of all the Inhabitants to one Church, was, by the addition of some one or more new Churches, cantoned into more limited Divisions. And of this we have seen many notable instances in our Days; the prodigious Increase of Buildings in and about *London* and *Westminster*, having occasioned an Act of Parliament for building fifty new Churches, most of which are already finished.

No Church to be built, or endowed, without the Bishop's Consent.

14. From all which it is pretty certain, that in those Days Churches were built within the Precincts of some larger Parishes, and that the Limits of such Parishes were always appointed by the Bishop, who, though he might be guided in settling the Boundaries by the Extent of the Founder's Lands, (when the Church was built by a Layman) yet it could not be settled without the Bishop's Consent; and that, together with some Lay Patrons engrossing to themselves the Tithes, and other Church Dues, under Pretence of having built the Church, was the Reason a Canon was made for the Consecration of new-built Churches by the Bishop himself, because none should be built without his Privity.

In Chapels Churches were maintained by the Lord of the Manor.

15. If the Bishop gave the new Church a Right of Burial, in such Case the Lord of the Manor might (with his Approbation and not otherwise) give some Part of the Tithes to that Church, which before were due to the Mother Church; but if the Bishop would not allow the new-built Church such a Right, then it remained a Chapel. And if the Lord of that Manor would have a Curate there, he was to maintain him at his own Charge, and he was to have no Part of the Tithes, for they were due to the Mother Church; and the general Doctrine of this Section appears to have been the Opinion of the Court, upon a Question, Whether the Inhabitants of a Chapelry ought to contribute to the Repairs of the Mother Church? It was held, that a Chapelry may prescribe to be exempt from it, where it buries and christens within itself, and has never contributed to the Repairs of the Mother Church: But the Case before the Court was otherwise; it being a later Erection, they on the Consecration of their Burial-ground, undertook to contribute, &c. 1 Salk. 164. *Ball ver. Croft*, *Trin. 1 W. & M.*

To this Day Tithes are paid by the new Church to the old in some Places.

16. 'Tis true, many of these Districts, within which new Churches were built, did afterwards become Parishes, but even at this Day the Right of the Mother Church is still preserved

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preserved in several Places; I mean in respect to the Tithes; two Parts whereof arising out of the Lands of the new Parish, are still paid to the old Church standing in the first Division of Parishes; and that is where the Bishop did not think fit to allow any more than the third Part to the new-erected Church.

17. And hence it is, that when it is a Question, Whether it be a Parish Church, or only a Chapel? It shall be decided by the Bishop's Certificate. Law Cases concerning Pa-
rishes.

18. If the Bounds of a Parish come in Question in the Spiritual Court between a Parson and Vicar, tho' the Parson is an Impropiator, yet it shall be tried in the Spiritual Court, and no Prohibition shall go. As for Instance; If there is a Vill in the Parish, and the Vicar hath the Tithes of the Vill, and the Impropiator hath the Tithes of the rest of the Parish, and the Question between them is, Whether the Lands out of which the Vicar claims Tithes are in the Parish or Vill? This shall be tried in that Court. The Reason may be, because the Contest is between Spiritual Persons, and the Right of Tithes is only in Question; but this would not pass in a parallel Case between a Clergyman and a Layman, where a Vicar sued for Tithes, and the Defendant suggested a *Modus* payable to the Parson; and here the Contest was between the Vicar and Parson, who are both Spiritual Persons. and yet a Prohibition was granted. 2 Roll. Abr. 312. Sid. 332.

19. So if there are two Villis in a Parish, and a Question arises concerning the Boundaries of those Villis, it shall be tried in the Spiritual Court; but the Law is not the same where the Question is concerning the Boundaries of a Parish between a Clergyman and a Layman; for if a Suit is brought for Tithes arising *infra loca decimabilia* of such a Parish, and the Defendant suggests, that the Lands are in another Parish, and that he had paid Tithes to the Parson there, this shall be tried at Law; and the Reason is, because the Inheritance of the Land out of which the Tithes arise, may come in Question. Cro. Eliz. 178, 228. 2 Roll. Abr. 282, 29. 1 Lev. 78.

20. So where there is a Presentment *ex Officio*, against a Man for not coming to his Parish Church, and he pleads that it was not his Parish Church, and that he frequented another, a Prohibition shall go. 13 Rep. 17. And the same Point was resolved Trin. 3 Ann. in the Case of *Britton versus Standish*. 3 Salk. 88, 89. Mod. Caf. 188, 189. with this, that if the Person be a professed Churchman, and his Conscience permits him sometimes to go to the Dissenting Meetings on a Sunday, the Toleration-Act will not excuse him for not coming to Church; for the Act was not made for People of this Sort.

Law Cases
about Parishes.

21. It hath been a Question, What shall be reputed a Parish within the Statute of 43 *Eliz. c. 2.* for Relief of the Poor? As for Instance; *Hinchy* was an ancient Rectory, and had an ancient Church; *Stoke* was an ancient Village, and Parcel of the Rectory of *Hinchy*; but it appeared, that from the Time of King *Henry VI.* there had been a Church likewise at *Stoke*, and that it was reputed as a Parish, and that the Inhabitants thereof had all Parochial Rights, and Churchwardens, and this made it a Parish. *Cro. Car. 92.* So where the Village of *Totteridge* was anciently Parcel of the Parish of *Hatfield*, and the Tithes there arising were paid to the Parson of *Hatfield*, who always found a Curate at *Totteridge*; but at the Time of making the Statute, *Totteridge* was a Parish in Reputation, and had Churchwardens and Overseers of the Poor, and had made Rates, which were collected and levied by their own Officers. It had likewise all Parochial Rights, and never contributed either to the Poor of *Hatfield*, or the Repairs of that Church, or joined with them in any Assessment. This made it a Parish distinct from *Hatfield*. *Cro. Car. 394.* But making Rates alone, without having other Parochial Rights, will not make it a Parish, though there was a Chapel there before the making the Statute, and though Divine Service was read there at that Time. *4 Mod. 157.*

Annual Perambulation.

22. The Boundaries of Parishes being now settled by Custom, Care is and ought to be taken, to preserve them by annual Perambulations, which should be kept up at the usual Time, and the Boundaries of the Parishes so carefully viewed and settled in them, as to leave no Room for any Doubt or Contest about them.

23. In the Times of Popery these Perambulations were performed in the Nature of Processions, with Banners, Hand-Bells, Lights, staying at Crosses, &c. and therefore, though such Processions were forbidden by the Injunctions of Queen *Elizabeth*, yet by the same Injunctions, the useful and innocent Part of Perambulations were, and are still retained.

24. In some of these Perambulations the People have demanded Refreshments, as of Right, and alledged a Custom for it; as the Churchwardens of *Uffington* in *Berkshire*, *An' 13 Jac. I.* demanded something to eat and drink of a Person who lived in a particular House in that Parish, alledging, that those who lived in that House always allowed it; and being denied it, a Suit was brought in the Spiritual Court to recover it; but it was held to be an unreasonable Custom, *Moor 916.* The like Custom was alledged, that all Farmers of a Farm called *Longton*, had used to find Cakes and Ale at a Perambulation, to the Value of eight Shillings; but this being a Prescription in Farmers, 'tis not good to charge the Land; it ought to have been in Owners: And it would have been

been difficult to support it against the Owner ; for, it is easier to imagine that it began by Generosity and Whim, than by any reasonable Consideration paid for it.

25. Churches are commonly divided into Cathedral, Collegiate or Conventual, and Parochial. 1. Cathedral Churches take their Name from *Cathedra*, a Chair, the Bishop's Chair or See being there placed ; and of which Church the Bishop is Incumbent, and to which the whole Diocese belongs. Of these Churches something hath been already said. 2. Collegiate Churches are those which being built in Towns at some Distance from the Cathedrals, and not large enough to be made Bishopricks, the Bishop settled a competent Number of Presbyters there ; these Churches not long after were called Collegiate Churches, and were liberally endowed by the great and pious Men of those Times. Like unto these, were those called Conventual Churches, which, in Time past, belonged to some Convent, Abby, or Priory, &c. but of these, there being but few left since the Reformation, and no Parishes properly belonging to them, I shall add no more about them. 3. But shall proceed to treat of Parochial Churches, to which Parishes are annexed, or rather of Parishes themselves. And thus much of the Original and Institution of Churches and Parishes in general : I shall only add, that they are computed to be in all *England* and *Wales* about 9284 Parishes, whereof about 3845 are impropriated.

Three Sorts of Churches.

26. It will be of Use to the Reader to observe in this Place, that of ancient Time, before a new Constitution made by the Pope, *Anno Dom.* 1200. the Patron of a Church might grant his Tithes to another Parish : But in or about that Year, Pope *Innocent III.* in a Decretal Epistle directed to the Archbishop of Canterbury, *That just Tithes may be paid to Parish Churches*, writes to this Effect. *We have heard that many in your Diocese do not pay their whole Tithes, or two Parts of them, to the Churches in the Parishes where they live, or have their Estates or Possessions, and from which they receive the Sacraments of the Church, but distribute them to others at their Pleasure. Whereas therefore it seems inconvenient and unreasonable, that the Churches which sow Spiritual Things, ought not to reap Temporal Things from their Parishioners : We indulge your Brotherhood by the Authority of these Presents, that it may be lawful to you, in such Case, to ordain what shall be Canonical, and to cause by Ecclesiastical Censures, what you shall decree to be firmly observed ; any Contradiction or Appeal of any Person, or Custom hitherto observed to the contrary notwithstanding.*

Tithes when made Parochial.

2 Instit. 641.
2 Co. 44

27. Lord Coke observes rightly, that this Decretal bound not the Subjects of this Realm (*i. e.* formerly ;) but the same being just and reasonable, they allowed it by a tacit Consent ;

and so it became Part of the Law of the Land. Notwithstanding which, there are several Instances of Prescriptions which have since been insisted on and allowed, and which can only be justified by supposing them to have commenced when the Laity enjoyed the ancient Latitude above mentioned of distributing their Tithes at Pleasure, of which more hereafter.

CHAP. II.

Of Incumbents, Institution, &c. and Lapse.

Parish defined. 1.

FROM what has been said, a Parish, collectively taken, may be defined to be a Body of People living within a certain District, to which belongs a Parish Church, with a Right of Burial, and of having the Holy Sacraments duly administered there, with a Right of Tithes, and other Church Dues, and of making Parish Rates, and choosing their own Parish-Officers, &c. which Officers, with the Incumbent, by Order of the Vestry, have the Direction and Management of all the Parish Affairs and Business.

Of Incumbents.

2. Of all which Officers we shall treat in their Order, and shall begin with those whose Attendance is more immediately required in or about the Church; among which, the chief is the Incumbent or Minister, whether he be Rector, Vicar, or Curate.

Incumbent who.

3. An Incumbent is properly a Clerk who is resident on his Benefice, and is so called, because he doth or ought to bend all his Study to the Discharge of the Cure of the Church to which he belongs, and may be considered under a threefold Denomination. 1. Rector. 2. Vicar. 3. Curate. To which may be added, in some Parishes especially in and about London, Lecturers and Readers; of all which in their Order.

4. Note; By Statute 14 Car. 2. c. 4. neither Layman nor Deacon is capable of being admitted into any Parsonage, Vicarage, Benefice, or other Ecclesiastical Promotion or Dignity whatsoever, but must obtain the Orders of a Priest to qualify him for the same. And this Law holds in the Case of Donatives, and his Ordination must be Episcopal. But the same Proof shall be allowed to prove Orders, as to prove a Marriage, viz. constant Reputation, &c. and if he were *Laitus*, the Admission, Institution, and Induction, were not void, but

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but voidable; and the Plenary remains until Deprivation.
Comb. 202. Dr. Harscot's Case, 5 W. & M. in B. R.

5. The most usual Way of taking a Title to a Church is by the Presentation of the Patron, that is, his Nomination of his Clerk to the Bishop or Ordinary for the Time, to be by him admitted and instituted into the Church or Benefice that is void. When the Gift of the Living is in the Ordinary, he is said to collate, and then there is no Presentation.

6. A Presentation to the Archbishop of Canterbury.

Presentations.
The Forms.

7. *To the Most Reverend Lord and Father in Christ, the Lord A. by the Divine Permission Archbishop of Canterbury, Primate and Metropolitan of all England, or in his Absence to his Vicar General in Spiritual Things; or to any other Person, having sufficient Authority in this Part, &c. as in the next Section; if it be to the Archbishop of York, the Word all must be omitted; if to any other Bishop, it runs thus.*

8. *To the Reverend Lord and Father in Christ, the Lord B. by the Divine Permission Bishop of L. or in his Absence to his Vicar General in Spiritual Things, or to any other Person having sufficient Authority in this Part. * Sir H. J. Baronet, the true and undoubted Patron of the Rectory of the Parish Church of D. Health everlasting in the Lord, to the Parish Church of D. asore said, of your Diocese, now vacant by the natural Death of P. T. the last Incumbent there, and belonging to my Presentation by full Right, I do present to your Fatherhood †, my beloved in Christ A. B. Professor of Divinity, humbly intreating you, that you will vouchsafe with Favour to admit the said A. B. to the said Church, and cause him to be instituted and inducted into the Rectory of the said Church, with all its Rights and Appurtenances, and to do and fulfil on this Behalf, all and singular the other Things which shall appear to belong to your Episcopal Office. In Witness whereof, &c.*

* Or on this
Behalf. Lat.
in hac parte.
† Or Resigna-
tion, &c. as the
Case may be.
‡ Or Paternity.
Lat. Paternitas.

9. It is said, the Presentation may be by Parol only, in the Case of a private Person. In the Case of a Corporation aggregate they must present under their Common Seal, and Signing and Sealing is commonly used in the other Case. And if the Patron be an Infant of never so tender Age, as a Year or a Month old, the Presentation must be by himself, and not by his Guardian; for, the Guardian cannot account for it: And this was so held by Lord King, Lord Chancellor, about the 5th of George II. And it seems that a Presentation to Benefices above the Value of ten Pounds in the King's Books is necessary to be in Writing, since the Statutes which have imposed Stamp-Duties of forty Shillings each on such Presentation.

10. After the Clerk is examined, he is to subscribe the 39 Articles in the Presence of the Ordinary, before he be admitted; and also so much of a Declaration provided by Stat. 14 Car. 2.

Car. 2. c. 4. as is not taken away by subsequent Statutes ; and is in these Words. *I A. B. will conform to the Liturgy of the Church of England, as it is now by Law established.* And of this the Bishop is to make a Certificate.

Admission.

11. Admission is nothing more than the Declaration of the Ordinary, that he approves of the Clerk as a fit Person to serve the Cure of the Church, to which he is presented. *Co. Lit. 344.*

Institution.

12. Institution is that Act by which the Ordinary commits to the Clerk the Cure of the Church, to which he is presented. And the Ordinary usually makes Letters Testimonial of it afterwards, though they are not necessary. Note, though the Bishop be not resident within his Diocese, he may admit and institute notwithstanding ; his Jurisdiction in this Respect accompanying his Person.

Co. Lit. 344.

Induction.

13. Next follows Induction, which is the putting the Clerk in Possession of the Church, and by this Act he is made a compleat Incumbent. In this Case, the Ordinary makes a Mandate to him whose Duty it is to induct, (which is ordinarily the Archdeacon) or he may direct it to such other Clergymen as he pleases. And note, there is a great Variety of peculiar Jurisdictions for this Purpose, of which the Clerk is to inform himself where his Lot falls, or else his Induction may be avoided. The Archdeacon does not usually induct in Person, but sends a Mandate to the Rectors, Vicars, &c. of the Archdeaconry.

Plenary.

14. By Admission and Institution without Induction, the Church is full against all Persons but the King, having the Right of presenting fully in him ; and the Clerk is enabled and obliged to attend the Cure of Souls there ; and he may enter into the Glebe, and take the Tithes before Induction, against any Stranger, and yet he is not seised of the Temporalities so as to be able to grant or sue for them.

Co. Lit. 344.

Further Qualifications, &c.

15. Within two Months after he shall be in actual Possession of the Benefice, he shall in that Church, Chapel, or Place of publick Worship belonging to the Benefice, (without some lawful impediment, to be allowed and approved by the Ordinary, hinder) and within one Month after such Impediment removed, upon some Lord's Day, openly, publickly, and solemnly read the Morning and Evening Prayers, appointed to be read, by and according to the Book of Common Prayer, at the Times thereby appointed ; and after such Reading shall openly and publickly, before the Congregation there assembled, declare his unfeigned Assent and Consent unto all Things therein contained and prescribed, according to this Form of Words, and no other : *I A. B. do, &c.* See Stat. 13 & 14 *Car. 2. c. 4.* it is printed and bound with all the Folio Common Prayer Books. And see for a Certificate and Declaration which

which he is also to read within three Months. Stat. 14 Car. 2. c. 4. and above, §. 10.

16. He is also, within two Months after Induction, publickly to read the 39 Articles of Religion in the Church where he has Cure, in the Time of Common Prayer there, with Declaration of his unfeigned Assent thereto, on Pain of Deprivation *ipso facto*. Note; these two Months have but 28 Days to the Month, being construed according to Common Law. And this Declaration of unfeigned Assent must be absolute; for if he adds any hypothetical, restrictive or qualifying Words, his Declaration is insufficient in Law. Reading the 39 Articles in the Church Porch is sufficient, Divine Service being read there also, the Key of the Church being withheld from him. It is the safest Way to read the Articles, Declaration, &c. after Prayers are begun, and before they be ended.

17. It is a prudent Caution for the Clerk to have some intelligent Persons whom he can rely on, present when he is inducted, and who understand the Greek Language, because of the Words (*ὁρνεμα σαρκος*) in one of the 39 Articles; and if he can conveniently, the same Persons present when he performs the other Matters required by Law to be performed in his Parish Church, and that they observe as he reads the Prayers, &c. and he may give them Copies of the Bishop's Certificate, and of the Declaration which he is to read; and provide for them a Book, containing the 39 Articles; that they may observe, and then that they set their Hands to the Book of Articles, and that he did read a true Copy.—— I shall not enlarge the Caution to Clergymen, because it is held, that if a Person will aver, that a Clergyman did not read, &c. the Negative in this Case must be proved, because the Penalty for the Omission is so great, *viz.* his Loss of the Living. And yet it is not amiss that the Clerk have it in his Power to prove the Affirmative. *Nimia Cantela non Nocet.*

18. Every Person promoted to any Ecclesiastical Office, Benefice, &c. before he shall take upon him to receive, use, exercise, supply, or occupy any such Promotion, &c. shall make, take, and receive the Oath (*appointed by Stat. 1 W. & M. §. 1. c. 8.*) to be taken instead of the Oaths of Supremacy and Allegiance, before such Persons as have Authority to admit such Person to such Office, &c. or else before such Person or Persons as by Commission under the Great Seal of England shall be appointed to administer such Oaths. And if any such Person so promoted, peremptorily and obstinately refuses to take the same Oaths so to him to be offered, he shall presently be adjudged disabled in the Law to receive, take, or have the same Promotion, &c. to all Intents; Constructions, and

and Purposes. *Note*; The new Oaths are appointed to be taken by such Persons, in such Manner, at such Times, before such Persons, in such Courts or Places, as the abrogated Oaths ought to have been taken; and under the same Penalties, Forfeitures and Disabilities, for Neglect or Refusal. But see the following Directions by the Statutes of King George I. and King George II.

19. The new Oaths are these. *I A. B. do sincerely promise and swear, that I will be faithful, and bear true Allegiance to his Majesty King George II. So help me God.*

20. *I A. B. do swear, that I do from my Heart abhor, detest and abjure, as impious and heretical, that damnable Doctrine and Position, that Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whomsoever. And I do declare, that no foreign Prince, Person, Prelate, State or Potentate, hath or ought to have any Jurisdiction, Power, Superiority, Pre-eminence, or Authority, Ecclesiastical, or Spiritual within this Realm. So help me God.*

21. By Stat. 1 Geo. 1. Sess. 2. c. 13. he is also to take and subscribe the above Oath and the Abjuration Oath, which being of considerable Length, we shall not swell this Work with it; the rather because the Officers have it ready at Hand in all the proper Courts. And by Stat. 2 Geo. 2. c. 31. this is to be done in one of the four great Courts at *Westminster*, at any Time before the End of the next Term after he shall be admitted into or enter upon such Benefice, &c. or shall take and subscribe the said Oaths as aforesaid, at any Time before the End of the next Quarter-Sessions, of the County, City or Place, where such Person shall be or reside after he shall be admitted into, or enter upon any such Benefice, &c. Persons beyond the Seas are to perform this within four Months after their Arrival in *England*.

22. Persons who neglect or refuse to take and subscribe the Oaths, as by the Statutes in the 20th Section, shall be *ipso facto* judged incapable and disabled in Law to all Intents and Purposes whatsoever, to have, occupy or enjoy such Office, &c. or any Profits appertaining thereto, and such Office, &c. shall be void. And if such Person be convicted of exercising such Office, &c. after such Neglect or Refusal, upon any Information, Presentment or Indictment, in any of the King's Courts at *Westminster*, or at the Assizes, he shall be disabled from thenceforth to sue or use any Action, Bill, Complaint, or Information in any Court of Law, or to prosecute any Suit in any Court of Equity, or to be Guardian of any Child, or Executor, or Administrator of any Person, or capable of any Legacy, or Deed of Gift, or to be in any Office in *Great Britain*, or to vote at any Election for Members of Parliament, and shall

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shall forfeit Five hundred Pounds, to be recovered by any Action, &c. at *Westminster*.

23. The said Courts must administer these Oaths to Persons who tender themselves; and the proper Officer is to have two Shillings and no more from each Person. The Course at *Westminster* is, that none, except Persons of high Quality, trouble the Chancery on this Occasion: The other three Courts have appointed two swearing Days each, in every Week, and in each Court they swear all that come, the first and last Days of Term. The swearing Days are as follow: Monday and Thursday the *King's Bench*; Tuesday and Friday the *Common Pleas*; and Wednesday and Saturday the *Exchequer*. 'Twas thought good to mention these Things, because it is indecent for Persons of an ordinary Degree to trouble the great Courts, except in their Courses, which in one or other of them every Day of the Term affords, except Holidays. *N.B.* School-masters and private Tutors are to take these Oaths of Allegiance, Supremacy and Abjuration, as above directed, and the Severity of the Penalties is sufficient to deter all Men from a Neglect of this Sort.

24. Note; In order to take a Benefice of the greater Value, it is fit to remember the Stat. 13 *Eliz. c. 12.* which provides, that none shall be admitted to any Benefice with Cure of Souls of the Value of thirty Pounds in the King's Books, unless he be a Bachelor of Divinity at least, or a Preacher licensed by some Bishop, or one of the Universities of this Kingdom; and if not so qualified, his Institution is to be void.

25. A Performance of all these Requisites, *viz.* Reading, Oaths, &c. upon taking one Living, will not suffice for taking another, but must be repeated.

26. A Lapse is when the Ordinary, the Metropolitan, or Lapse. the King, acquire a Right to collate or present to a Church, at first by the Neglect of the Patron to present to it within six Months after Avoidance: 2dly, The Bishop neglecting, it devolves to the Archbishop; and on the like Neglect in him, to the King. This Time is computed by the Kalendar, according to the Ecclesiastical Computation; and not at 28 Days to each Month, as in Cases at the Common Law; and the Day in which the Church becomes void, is not reckoned for one.

27. The Patron must take Notice, on Peril of a Lapse, of the Church being void by Death, Creation, or Cession; but if by Resignation, or Deprivation by Canon Law, he must have Notice from the Ordinary, and the six Months are computed from such Notice. If the Avoidance is caused by a temporal Crime, as Treason, &c. or by an Act of Parliament, the Patron is to take Notice at his peril; unless such Act provides that

that he shall give Notice, as is done in the Statutes following, viz. 13 Eliz. c. 12. Stat. 31 Eliz. c. 6. Stat. 13 & 14 Car. 1. c. 4.

28. If a Patron presents his Clerk before the Bishop has collated, though the six Months are expired, the Lapse is cured, and the Presentation is good. When a *Quare impedit* is depending, a Lapse may incur, if the Bishop was not named in the Writ, therefore the Practice is to make him a Party. A Lapse may incur against an Infant or Feme Covert, and, *Note*, as is said before, §. 9. an Infant of what tender Age soever, signs his Presentation in Person, and not by Guardian. There are many other Rules concerning this Doctrine, which would be too prolix for this Treatise to contain. Readers who have particular Nicety in their Cases, are to read Books wrote expressly on this Subject; or (which is much safer) take the Assistance of learned Counsel.

C H A P. III.

Of Rectors.

1. **A** Rector, so called, *quasi Gubernator Ecclesie*, of old Times, was the Parson of a Parish where there was no Vicarage endowed, and as such was intitled, *pleno jure*, to all the Glebe Tithes, both great and small, and all other Church Dues arising or growing due within his Parish.

Who a Rector.

2. But latterly, since Appropriations began, is taken for the Parson of a Parish where there is a Vicarage endowed; in which Case, he is generally intitled only to the great, and the Vicar to the small Tithes, and other Church Dues arising and growing due within the Parish.

3. This Distinction at first took Place when Patrons appropriated their Tithes to Monastries, by which Means the Monks took the Tithes, and sent out some of their Convent to officiate the Cure without any, or at most, a very small settled Maintenance; by which Means, the Cure being but poorly served, the Bishop took Care that the Rector's Place should be supplied by one of the Secular Clergy, to whom the Rector, or the Convent, should allow some Portion of the small Tithes for his Maintenance; and this was called a Vicar.

The Original of
Sine-Cures.

4. And sometimes the Rector, with proper Consent, had Power to intitle a Vicar in his Church to officiate under him, and

and this was often done; by which Means two Persons were instituted to the same Church, and both to the Cure of Souls, and both did actually officiate. But now the Rectors, where there are Vicars also, having been long excused from Residence, are, in common Opinion discharged from the Cure of Souls; and this is the Original of *Sine-Cures*.

5. And hence it is, that when the Rector did endow the Vicarage, the Advowson of common Right is appendant to the Rectory; but Parishioners may prescribe for the Choice of a Vicar, and an Advowson may be Appendant to a Manor. Parishioners may prescribe to chuse the Vicar.

6. And as these *Sine-Cures* are presentable, so they must be assigned to the Ordinary, and when such *Sine-Cures* are donative, as some of them are, they may be more properly called *Sine-Cures*, than when the Incumbent comes in by Institution.

7. The same Church had sometimes a Rectory and Vicarage separate and distinctly endowed.

8. And though properly a Rectory or Parsonage doth consist of Glebe Land, and Tithes, with the Offerings, yet it may be a Rectory, though it have no Glebe but the Church and Church-yard; and in some Places, as in *London*, and other great Towns and Cities, there may be neither Glebe nor Tithes, but annual Payments and Offerings in lieu thereof; and by the Grant of a Rectory, all the Glebe, Tithes and Offerings will pass.

9. If a Rector demise his Rectory for Years, the Tithes will pass inclusive, although the Lease be by Parol only; but if he lease out his Tithes alone, they will not pass unless the Lease be by Deed or Writing. *Trin. 26 Eliz. Whitby and Sanders's Case*.

10. But the Rector may demise his Tithes to the Owner of the Land for one Year by Words only, as it was agreed by all the Judges in *B. R. Mich. 2 Car. 1. Rol. 179. in Bellamy and Raptorp's Case*; but he cannot demise them to a Stranger but must be by Deed. And thus much of Rectors; we shall proceed to treat of Vicars.

C H A P. IV.

Of Vicars.

1. **T**HE Original of Vicarages hath been already set forth, and tho' at first, perhaps, a Vicar might be removable *ad nutum Prioris*, yet by Degrees he got a settled Maintenance, which consisted in the Glebe, and some small Tithes.

A Vicar must be instituted and inducted.

The Oath of a Vicar.

Laws for endowing Vicarages.

When it shall be presumed the Vicarage was endowed.

Reunion to the Rectory shall not be presumed by discontinuing to present.

2. He is instituted and inducted in the same Manner as a Rector, only this Difference, that over and above what is required of a Rector, he is to take an Oath of perpetual Residence on his Vicarage (*nisi aliter dispensatum foret ab Episcopo*) and without taking such an Oath, his Institution is void. *Ego A. B. juro quod ero residens in Vicaria mea, nisi aliter dispensatum fuerit a Diocesano meo.*

3. At the first Beginning of Appropriations, there were great Complaints that the Monks took all the Tithes to themselves, and did not endow a perpetual Vicarage; whereupon an Act of Parliament was made 15 R. 2. c. 6. that upon every Appropriation the Bishop of the Diocese should see that the Vicar was competently endowed. Which Law being of little Effect, because the Bishops in those Days favoured the Monks too much, therefore, Anno 4 H. 4. c. 12. another Law was made, that in every Church appropriated, one should be ordained Vicar perpetual, and be canonically instituted and inducted (which the Monks were not) and also competently endowed, at the Discretion of the Ordinary; so that what the Vicar now claims, is either by Endowment or Prescription.

4. The Endowment is the Original Grant or Agreement made by the Abbot and Convent, or other religious Body, to or with the Vicar, they having the whole Benefice appropriated to them, and the *Quantum* was settled by the Bishop. These Grants were registered in the Archives of the Bishop, or in the Augmentation-Office, but most of them are now lost; therefore, if the Endowment itself doth not appear, and if no particular Proof can be made of it, yet the Appropriation is not void; especially if a Vicar hath, ever since that Statute, been instituted and inducted into that Vicarage; for in such Case, it shall be presumed that the Vicarage was lawfully endowed. 2 Cro. 252.

5. And it is to be observed, that tho' the Vicarage may be reunited to the Rectory out of which it was originally taken, yet, if no Vicar hath been presented for many Years, that shall

shall be no Discontinuance of the Vicarage, for it is the Fault of the Parson himself in not presenting; and therefore if a Vicar should get the King's Title by Lapse, he shall be intitled to the Endowment, though there had not been a Vicar presented before him for above an hundred Years. For a Reunion to the Rectory shall not be presumed only from such a Discontinuance to present; unless something be shewn to reunite the Vicarage to the Rectory. *Cro. El. 873.*

6. And where the Vicar cannot produce the Endowment, there Prescription usually takes Place; for if by constant Usage he hath enjoyed such a particular Estate, that shall be a sufficient Evidence of the Endowment; and if he could produce the Original itself, and should claim something which is not mentioned in it, yet, if he can prove that he and his Predecessors enjoyed it Time out of Mind, that will be a sufficient Proof to support his Right to it; because where there hath been a long and constant Possession, it may be reasonably presumed that the Vicarage hath been augmented with what the Vicar claims, by the Direction of the Bishop himself, upon citing all Persons concerned. Vicar may claim his Dues by Prescription.

7. The Endowment hath no Relation to the Lands, but to the Tithes; for if the Vicar prescribes to have the small Tithes, and if the Land had been plowed Time out of Mind, so that the Parson had the Tithe of the Corn; yet, if it is converted to any other Use, and small Tithes grow on that very Land, the Vicar shall have them. - 2 *Rol. Abr. 335. Pl. 5. See the next Section, and §. 11. and ch. 12.* What Tithes the Vicar shall have.

8. It hath been held, that by the Words *de decimis Garbarum*, the Vicar should have Tithe Hay, tho' *Garba* doth now signify a Sheaf of Corn; but 'tis probable that in ancient Grants *Garba* might be used to signify Hay, or at least that Hay was bound in Bundles. 2 *Rol. Abr. 335. Pl. 7.* So by the Word Altarage, the Tithes of Wool and Lambs and of many Things are comprehended; and if the Vicar hath for a long Time enjoyed such Tithes, he shall have them still as comprehended by that Word; though perhaps this may be more by the Force and Power of Custom, than of the Word itself. What is meant by Altarage.

9. Upon these Endowments, the Vicar hath as legal and lasting, tho' not so large an Interest in the Church as a Rector, for he is *perpetuus Vicarius*. The Soil in the Body of the Church is his Freehold, for it is Part of his Glebe; he must repair the Church, and for that Purpose the Trees in the Church-yard belong to him. 2 *Rol. Abr. 337. Pl. 3.* But this was by Virtue of the Stat. 14 *Ed. 3. c. 17.* for before that Act, the Parson, and not the Vicar, had the Freehold of the Glebe; he was subject to every Charge of the Vicarage, and if the Vicar himself was impleaded for any Thing concerning Vicar hath the Freehold of the Church.

ing it, he was to have Aid of the Rector; he could not maintain a *Juris utrum*, which he may do now by Virtue of that Statute, and both the Parson and Vicar have distinct and separate Rights, and may maintain distinct Actions to recover such Rights.

10. 'Tis true, the Vicarage did originally belong to the Parsonage, for it was derived out of it; but now, by Prescription, it may be appendant to a Manor, because it is possible the Rector might have granted it so Time out of Mind. But if there is no such Grant, the Rector is still, of common Right, Patron of the Vicarage, though by Composition it may be settled otherwise; and therefore, if he makes a Lease of his Parsonage, the Patronage of the Vicarage passes as incident to it. 2 *Rol. Abr.* 59.

11. As the Vicar hath the Freehold of the Glebe, so he may prescribe to have all the Tithes in the Parish, except those of Corn; and by Virtue of such Prescription, he shall have the Tithes of those new Seeds, as Clover-Grass, Hops, &c. for though he cannot particularly prescribe in such Cases, because they are new Things, yet they are within such a general Prescription, because all small Tithes are thereby comprehended, and the great Tithes excluded. 2 *Rol. Abr.* 333. *Pl.* 7. And because Vicarages are generally endowed with small Tithes only, I shall mention what those are in the 12th Chapter.

The Statute of 29 Car. 2. c. 8. set forth.

12. Here it may not be improper to mention the Statute of 29 Car. 2. c. 8. which takes Notice of Letters sent by the King to the Bishops immediately upon his Restoration, directing them, upon the renewing of Leases of Rectories and Tithes impropriate or appropriate, to reserve more than the ancient Rent, that it might be paid to the poor Vicars to augment their Vicarages, which was to continue during the Estate out of which it was granted, and afterwards; and that the Vicars should be adjudged in the Possession thereof, to them and their Successors, and should have Remedy to recover such Rents by Distress or Action of Debt. Such Leases are to be entered in a Parchment Book, to be kept in the Bishop's Register; which being attested by the Bishop himself in that Book, and that the Augmentation was intended for such Use, shall be as a Record, and a Copy thereof proved by Witnesses, shall be given in Evidence. If a Vicarage be not sufficient to maintain the Vicar, the Bishop may compel the Rector to augment the same by the aforesaid Statute; but if the Profits of the Parsonage or Vicarage fall into Decay, so that either of them by itself is not a sufficient Maintenance for the Parson or Vicar, they ought again to be united. 2 *Rol.* 337. And whether Vicarage or not, shall be tried in the

Bishop may compel the Rector to augment the Vicarage.

the Spiritual Court, by Reason it could not begin, or be created but by the Ordinary. 3 *Salk.* 378.

13. Vicar enjoyed a Tithe Time out of Mind, which was not in his Endowment, and adjudged good, and shall be intended an Augmentation made by the Parson. *Hardres* 328, 329. And Endowment of Vicarages have been always favoured at Law, the Vicars, for the most part, having the Cure of Souls.

14. It hath been resolved, that where there is a Parsonage and Vicarage endowed, that the Bishop, in the Vacation, may dissolve the Vicarage; but if the Parsonage be appropriated, the Bishop cannot dissolve the Vicarage, for upon a Dissolution the Cure must revert, which it cannot, into Lay Hands. *Parry versus Banks, Palmer* 219. 12 *Jac.* 1. And the Dissolution of the Vicarage may be made when the Vicarage is full, such Dissolution being mentioned to take Place after the Death of the Incumbent, when the Church shall be void.

Where a Vicarage may be dissolved.

CHAP. V.

Of Appropriations.

1. IT is to be observed, that some of our Books make a Difference between an Appropriation and an Impropriation. An Appropriation, they say, is properly so called when it is in the Hands of a Bishop, College, or Religious House, Impropriation, when it is in the Hands of a Layman.

An Appropriation, what.

An Impropriation.

2. Appropriation so called, because Parsons not being ordinarily accounted *Domini*, but *Usufructuarii*, having no Right of Fee-simple, which is in Abeyance, as the Law terms it, are, by Reason of their Perpetuity, accounted Owners of the Fee-simple, and therefore called *Proprietarii*.

Why so called.

3. To make an Appropriation, (after Licence obtained of the King in Chancery) the Consent of the Diocesan, Patron, and Incumbent was necessary, if the Church was full: If void, the Diocesan and the Patron, upon the King's Licence, might conclude it. *Plowden*, in *Grenden's Case*, 496. To dissolve an Appropriation, it is enough to present a Clerk to the Bishop, and he to institute and induct him; for that once done, the Benefice returns to its former Nature. *Co.* 7. *fol.* 13. *Camb. Brit.* 261.

How an Appropriation was made.

At first only to
Spiritual Per-
sons, after-
wards to
others.

Where it is
presumed the
Vicarage was
endowed.

4. Appropriations at first were made only to Spiritual Persons, such as were qualified to perform Divine Service; then, by Degrees, they were extended to Spiritual Corporations, as Dean and Chapter, &c. and lastly, even to Prioreesses, upon a Pretence to support Hospitality; and lest Preaching should by this Means be neglected, an Invention was found out to supply that Defect by a Vicar, as aforesaid. And it hath been a Question, Whether an Appropriation is good, where there is no Endowment of a Vicarage, because the Statute of 4 H. 4. c. 12. positively provides that Vicarages shall be endowed. But it is now settled, that if it is a Vicarage in Reputation, and Vicars have been instituted and inducted to the Church, it shall be presumed that the Vicarage was originally endowed. 2 Cro. 252, 59. Hardr. 328.

5. The Abbot and Convent had not only the Tithes of the appropriated Churches, but the Right of Patronage too; for that was extinct as to the former Patron, by the Appropriation, unless he had reserved a Right of Presentation to himself; and that made the Advowson disappropriate, and the Church presentable as before, but not by the old Patron, but by the Abbot and Convent, who were then bound upon a Vacancy to present a Person to the Bishop. Stil. 201.

6. But now, by the Stat. of 31 H. 8. c. 13. those Appropriations which were made formerly by Bishops, and enjoyed only by Spiritual Persons and Religious Houses, are become the Inheritance of Laymen; and though the Bishop's Power in such Cases is not mentioned in the Statute, yet the Law leaves all Matters of Right just as they were before; for when those Religious Houses were surrendered, the King was to have the Tithes in the same Manner as the Abbots had them in Right of their Monasteries, and there is a Saving of the Rights and Interests of all Persons; so that if before the Dissolution the Vicar had an antecedent Right to a competent Maintenance, and the Bishop had Power to allow it, 'tis not taken away now; and this was resolved in *Hitchcott and Thornbury's Case*, 2 Rol. Abr. 337.

Appropriations
brought in by
the Normans.
See Sect. 8. and
9.

7. Bishop Kennet tells us, that appropriating Parish Churches to Religious Houses, or giving them in full Right to the Monks absolute Property and Use, was an Engine of Oppression brought over with William the Conqueror, when the greater Prelates being Normans, had the Spirit of trampling on the inferior Clergy, who were generally English, and hated by them. And this Practice, which crept in with William the Conqueror, in a few Reigns became the Custom of the Land; and the Infection spread, 'till, as a sensible Writer computes it, within the Space of three hundred Years, above a third Part, and those generally the richest Benefices

in

in England, became appropriated. *Defence of Pluralities*, p. 113.

8. And the Vicar enjoying a full third Part of the Tithes, nay, and the Altarage, or Portion of Oblations and Perquisites, and small Tithes, in a Manner arbitrary, being all commonly reserved to the Vicar, made his Portion often equal to, if not exceeding that of the Convent.

9. From Corporations this Example went on till it came at last to the Parish Priests themselves, who in populous or rich Places obtained a Vicar to be endowed, and casting upon him the Cure of Souls, they had the Rectory appropriated to them and their Successors as a *Sine Cure* for ever.

10. It was upon this Equity of enabling a Priest to discharge the Cure of Souls, that most of the Vicarages, where there was a Rector in the first institution, did consist in the whole Tithes and Offerings; and the Portion reserved for a Rector improper, was but a small Pension of a Mark or two, or even of four Shillings, or two Shillings, in lieu of all other Right and Claim; of which Moderation there are many Instances upon the Rolls and Registers of our old Sees, especially of *York* and *Lincoln*.

11. Afterwards the Bishops, in their Forms of Ordination of Vicarages, laid down for the Rule of Proportion, that the Vicar for the Time being should receive the third Part of all Profits arising from and pertaining to the said Church. And if the smaller Tithes and Oblations (the common Allotment to a Vicar) would not amount to such a third Share, then some Part of the greater Tithes of Corn, &c. was allowed to make up such Deficiency. For the Bishop always had Power of saving a competent Portion for a Vicar, to be taxed and ordered by him, in due Consideration to Hospitality, and other Burdens; and afterwards to be moderated and augmented as should seem to the Ordinary fit and proper; for indeed, what was at one Time a Competency, might, at another, sink into a Deficiency.

12. A Church appropriate is disappropriated when he who is Parson appropriated, being also Patron of the Vicarage, doth present the Vicar to the Parsonage. This is a Reunion of the Vicarage and Parsonage, and the Presentee shall have all the Tithes, and other Profits belonging to the Church. The King's Licence is not necessary for the dissolving a Vicarage into a Parsonage presentative; but into a Parsonage appropriatory it is; because he thereby loses his Title of Lapse.

13. And tho' it be agreed on all Hands, that every Ordinary hath Power of obliging Spiritual Impropriators to assign a *congruam portionem* to the Vicar, and enforce the Allowance of it by Sequestration, and other Ecclesiastical Censures; yet, since the Dissolution of Monasteries, that Impropriations are

A small Pension to the Rector upon Appropriations.

Afterwards the Vicar had but a third Part.

Bishop had a Power of settling the Allowance.

How a Church appropriate is disappropriated.

Since the Reformation, Impropriations are become meer Lay Fees.

become meer Lay Fees, or Inheritances of a meer Temporal Nature, they are entirely freed from Spiritual Jurisdiction ; and the Ordinary hath no Power to make Augmentation of a Vicarage out of any Rectory which is in the Hands of a Lay Impropiator.

CHAP. VI.

Of Curates.

How Curates
were first
made.

1. **I**N Times of Popery there were many Churches, the entire Revenue of which was appropriated, annexed, and united *Mansj Monachorum*, and not like other Appropriations, under the Tie of having perpetual Vicars appointed in them, but left to be served by temporary Curates belonging to their own House, and sent out as Occasion required. But when such Appropriations, together with the Charge of providing for the Cure, were transferred from Spiritual Societies to single Lay Persons, who were not capable of serving them by themselves ; and who, by Consequence, were obliged to nominate some particular Person to the Ordinary for Licence to serve the Cure ; the Curates, by this Means, became so far perpetual, as not to be wholly at the Pleasure of the Impropiator ; nor removable, but by the due Revocation of the Licence of the Ordinary. And if the Patron of a Donative, or Curacy perpetual, do not nominate a Clerk, the Bishop may compel him to do it by Spiritual Censures ; and in perpetual Curacies, he may likewise sequester the Profits, and appoint another to take care of the Cure, 'till the Patron shall nominate a fit and proper Clerk ; whether he can so do in Donatives is doubted, the Place being exempt from his Jurisdiction ; but by Stat. 1 Geo. 1. c. 10. if Cures augmented by the Governors of Queen Anne's Bounty, shall remain void for six Months, without any Nomination of a Person to serve the same, they shall lapse to the Bishop, &c. according to the Course of Law in Presentative Livings.

2. In Case also of Pluralities, which must necessarily imply Non-Residence upon one of the two Benefices, 'tis requisite that in such Case, or if he is old and infirm, the Incumbent should have a Curate to supply one of his Cures.

3. The common Usage is, that Licences are granted by the Chancellor, and the forty-eighth Canon prohibits Curates to serve in any Place, without Examination and Admission by the

Ought to take
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the Bishop of the Diocese, under his Hand and Seal, or by the Ordinary, having Episcopal Jurisdiction; so that the Law requires the Approbation of the Bishop to the Admission of a Curate, and no Incumbent ought to take one without it. 'Tis true, many Licences are granted without the Bishop's Hand and Seal, which though not void, are irregular, because expressly against the Canon.

4. Now 'tis not only necessary in Respect to the Church, And why. that the Curate should be allowed by the Bishop, who, 'tis presumed, will allow no other than a Person of tolerable Abilities to officiate in the Holy Function; but 'tis convenient for the Curate himself; for when he hath the Approbation of the Bishop, he usually appoints the Salary too; and in such Case, if there should be any Neglect of Payment, the Curate hath a proper Remedy in the Ecclesiastical Court, by a Sequestration of the Profits of the Benefice; but if he have only a Licence without the Bishop's Hand and Seal, then if his Wages should not be paid, he must bring an Action at Common Law against the Incumbent, in which there are some Niceties which are not required in the other Case; as first, he must prove the Agreement; he must likewise prove, that he subscribed the Declaration according to the Act of Uniformity; for 'tis expressly required by that Act, that every Curate shall do it, or be *ipso facto* deprived of his Curate's Place. These are the Remedies which he hath for his Salary; but before the Stat. 29 Car. 2. c. 8. he had nothing to do with the Tithes themselves, and therefore Payment to the Curate was no good Discharge against the Impropiator.

5. If the Incumbent should die after a Curate is thus appointed, and the Fruits of his Spiritual Promotion received during the Time of the Avoidance are not sufficient to pay the Curate's Stipend, then by Stat. 28 Hen. 8. c. 11. the next Incumbent is obliged to pay it within 14 Days after his Induction. I admit that such Curate hath no fixed Estate in his Curacy, but that the Bishop may remove him at Pleasure, without any formal Process at Law, though the Incumbent cannot; but this is seldom done, especially where the Curates are what are called perpetual Curates. See *Sec.* 7.

6. 'Tis true, a Curate is no sole Corporation, and therefore cannot take any Benefit of a Devise to him by that Name. But if an Impropiator should devise a certain Portion of Tithes to him, and to all that shall serve the Cure after him, though the Curate is incapable by Law of taking such a Devise for the Reason above-mentioned, and for that he hath no Succession; yet a Court of Equity hath decreed, that the Heir of the Devisor shall be seised in Trust for the Curate for the Time being. 2 Vent. 349.

If Incumbent dies, his Successor must pay the Curate.

Curate not capable of a Devise by Name.

But by Statute
29 Car. 2. c. 8.
hath a more
fixed Estate
than before.

7. It hath been mentioned before, that when the Bishop approves the Curate, he usually appoints his Salary, which he might alter or increase as he saw Occasion; but this must be understood to be before the Statute of 29 Car. 2. c. 8. for augmenting Vicarages and Curacies; for since that Statute, the perpetual Curates have a more fixed and established Right to their Salaries; for many Ecclesiastical Persons, and others, since the Restoration, have, upon renewing their Leases of Tithes, reserved more than the ancient Rents, on Purpose that the same might be applied to improve poor Vicarages and Curacies.

Case of Curate
recovering his
Salary.

8. But because such augmented Rent was not in some Leases made payable to the Vicars and Curates themselves, therefore the Statute provides, that as well when 'tis made so payable, as where 'tis reserved by Way of Increase to the Lessors, but intended for the Benefit of the Vicar or Curate, that it shall continue during the Lease, and afterwards, in whose Hands soever the said Tithes shall be, and they shall be chargeable therewith, whether the same is reserved or not. For by that Statute, these Curates are declared to be in the actual Possession of such augmented Rents, for the Use of themselves and Successors, and may distrain or have an Action of Debt to recover the same; so that they have a Right by this Statute to such Salary, and cannot be deprived of it at the Pleasure of the Bishop, though the Curate is licensed *ad nostrum duntaxat beneplacitum duraturum*; therefore, like other Incumbents, they must be deprived by due Course of Law. And accordingly, Anno 34 Car. 2. the Dean of Lincoln having made a Lease for three Lives, of the Rectory of Mansfield, reserving a Rent to himself and his Successors; and the Lessee having covenanted to find a Curate, such as the Dean should approve, and to pay him forty Marks *per Annum*; the Curate who was nominated by the Lessee, approved by the Dean, and licensed by the Bishop, to the Curacy of the Church of Mansfield, brought an Action of Debt for a Year's Pension, and recovered it.

Augmentation
by Q. Anne's
Bounty.

9. And now by 1 Geo. 1. c. 10. such Churches, Curacies, and Chapels, which shall at any Time after that Act be augmented by Queen Anne's Bounty, are declared and established to be perpetual Cures from the Time of such Augmentation; and the Ministers duly nominated and licensed thereunto, and their Successors, shall be Bodies Politick and Corporate, and be named as in the Grant of Augmentation; and may take in Perpetuity, to Successors, Lands, &c. from the Governors of the Bounty, and those who contribute with them: And the Impropriators or Patrons are not to benefit by the Augmentation, and pay such Ministers such Pensions, &c. as they

they were compellable to pay before the Act. And Lapse shall incur in Default of Nomination to such Cures: But if the Patron shall nominate before Advantage is taken of the Lapse, the Nomination shall be effectual, even against the Crown. And the Right of Nomination may be granted or recovered, or the Incumbency cease, as in the Case of a Vicarage Presentative.

10. It hath been a Question, Whether the Executors of a Curate may be sued in the Spiritual Court for Dilapidations; some are of opinion that they cannot, because he is not properly an Incumbent, for he doth not come in by Institution and Induction, and therefore is not to be charged himself, nor those who represent him.

11. By Statute 18 Eliz. c. 11. every Person qualified to have two Benefices, may demise one of them to his Curate only, and not absenting himself above forty Days in any one Year. Every beneficed Pluralist shall have his Benefice supplied by a Curate that is a sufficient and licensed Preacher; and a resident Curate may take a Lease of the Parsonage, which Nobody else can; and if he is desirous to teach School, a Licence shall be granted to no other; provided that he shall have no Licence in Country Towns, where there is a publick School founded, and a Master allowed already. *Can. 41 & 48.*

12. No Curate shall be permitted to serve in any Place without Examination and Admision of the Bishop or Ordinary, nor remove without Testimonials of the Bishop of the Diocese, or Ordinary of the Place whence they came, of their Honesty, Ability, and Conformity to the Ecclesiastical Laws of the Church of *England*. *Can. 58.* And no Curate can serve more than one Church or Chapel on one Day, unless that Chapel be a Member of the Parish Church, or united thereto, or unless the said Church or Chapel be not able, in the Judgment of the Bishop or Ordinary, to maintain a Curate.

13. By Statute 12 Ann. c. 12. if a Rector or Vicar shall present any Curate to the Bishop or Ordinary, to be licensed to serve the Cure in his Absence, the Bishop having Regard to the Greatness of the Cure, and Value of the Living, shall, before granting such Licence, appoint under his Hand and Seal, a Stipend not exceeding fifty Pounds *per Ann.* nor less than twenty Pounds, to be paid, at such Times as he shall think fit, by the said Rector or Vicar.

14. Tho' it hath been formerly said, that *Vicarius non habet Vicarium*, yet by long Practice 'tis now as allowable for a Vicar to have a Curate as a Rector. And when the Incumbent is rendered incapable of the Administration of his Cure, by any habitual Distemper of Mind, as Frenzy, Lunacy, &c.

cy, &c. the Ordinary may appoint a Coadjutor to receive the Profits, and discharge the Burthens, with an Obligation to be accountable to him when called upon. Coadjutors being always Clergymen, might also have the Spiritual Part committed to them; but this was no Part of the Office of a Coadjutor, as such, which did anciently relate to the Temporalties only. *For more Matter, see Chap. 2.*

C H A P. VII.

Of Lecturers.

1. **I**N many Parishes, especially in and about *London*, there are Lecturers chosen by the Parish in Vestry assembled; and this Office may be executed by one who hath no Title to a Benefice, and 'tis sufficient if such a Person is in Deacon's Orders; and if he be unduly removed, a *Mandamus* lies to restore him. Case of *St. John's Chapel* in *St. Andrew's, Holbourn*.

What a Lecturer is obliged to do.

2. By the Canon, every stipendiary Preacher that readeth any Lectures, or catechiseth, or preacheth in any Church or Chapel, shall twice at the least every Year, read himself the Divine Service upon two several Sundays, publickly, and at the usual Times, both in the Forenoon and Afternoon, in the Church where he readeth, catechiseth, or preacheth; and shall likewise as often in every Year administer the Sacraments of Baptism (if there be any to be baptized) and of the Lord's Supper, in such Manner and Form, and with the Observation of all such Rites and Ceremonies, as are prescribed by the Book of Common Prayer in that Behalf, upon Pain of Removal from his Place, by the Bishop of the Diocese, 'till he submit; the same is required of beneficed Preachers, upon Pain of Suspension.

3. And the Law requires, that such Lecturer should not only have the Consent of those by whom he is employed, but likewise the Approbation and Admission of the Ordinary; and he must likewise, at the Time of his Admission, subscribe the Declaration and Acknowledgment required by the Statute 14 *Car. 2. c. 4.* and this he must do in the Presence of the Bishop, and get him to certify it under his Hand and Seal; which Certificate and Declaration he must read within three Months following, in the Parish Church where he is to officiate, on some Sunday, in the Time of Divine Service, and

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in the Presence of the Congregation ; and if he neglects it he loses his Place. He must likewise have a Licence from the Bishop, and read the thirty-nine Articles in his Presence, and declare his unfeigned Assent to the same; and if he preaches in the Week days, he must read the Common Prayer for the Day, when he first preacheth, and declare his Assent to that Book, and shall do the same the first Lecture-day in every Month, so long as he continues Lecturer; if he neglect or refuses, he is disabled to preach till he conform. And if he shall preach before he conforms, he shall be committed for three Months without Bail, by a Warrant of two Justices of the Peace, the Offence being certified to them by the Ordinary.

Must have a Licence from the Bishop.

4. In *Michaelmas Term*, 15 *Car. 2.* a Bill in Equity was exhibited to recover the Payment of one hundred Pounds a Year, which was granted to the Plaintiff by Order of the Vestry, in the Parish of *St. Botolph Bishopsgate*; there was a Defect in the Bill, because all the Parties to the Order were not named in it, and made Defendants, and for that Reason the Plaintiff had no Decree; but the Court was of Opinion, that the Arrears were justly due, and inclined to make a Decree for the Payment, if it had not been for that Defect in the Bill.

Case of a Lecturer recovering his Salary.

5. The Bishop is a proper Judge of the Fitness of the Person to be licensed as a Lecturer; (for he must be licensed) but if the Right of the Lectureship comes in Question, a Prohibition will be granted. 3 *Salk.* 87. If the Bishop refuse his Licence to a fit Person, the Remedy is not by *Mandamus*, but by Appeal. *Cases W.* 3. 433. A Lecturer appointed by a Stranger must have the Parson's Leave to preach, or he is a Trespasser. *Case 1: W.* 3. 420.

C H A P. VIII.

Of Readers.

IN several Parishes also, when Prayers are read on Week-Days, there are also Readers to read Divine Service, for a Stipend paid by the Parish; this may be done by one of twenty-three Years of Age, and only in Deacon's Orders, who may also catechize Children, baptize Infants, bury and marry; and before the Act of Uniformity, a Deacon might have been an Incumbent on a Living, but not since; and the

very

very Form of ordering Deacons expressly mentions, that it is his Office to assist the Priest in the Distribution of the Holy Communion; and from hence a Question hath arisen, viz. that since by the Statute of 14 Car. 2. c. 4. those who are not Priests by Episcopal Ordination, are prohibited to administer the Sacrament of the Lord's Supper, under the Penalty of one hundred Pounds, one Moiety to the King, the other to be divided between the Poor of the Place and the Prosecutor, whether a Deacon doth not incur that Penalty by distributing Wine to the Communicants? But it seems clear that he doth not, for we do not hold that this Sacrament is administered by giving the Cup only.

Before we leave this Head of Incumbents, it may not be improper to mention a few Things, the Ignorance or Neglect whereof may subject them to several severe Penalties, and in some Cases to Deprivation itself.

CHAP. IX.

Of Pluralities.

Stat. 21 H. 8.
c. 13. for forth.
Residence.

1. BY Statute 21 Hen. 8. c. 13. it is enacted, that every beneficed Clergyman shall be personally resident, at or upon his Benefice; and if any such Person shall wilfully absent himself from his said Benefice, &c. by the Space of one Month at one Time, or two Months at several Times in any one Year, to be accounted at several Times; such Person so absenting himself shall forfeit ten Pounds for every such Default, on Half to the King, the other half to the Informer, to be recovered as is expressed in the said Act.

2. Every Pluralist, by special Provisoos in the Body of his Dispensation, is obliged to reside two Months in every Year on that Benefice from which he is absent for the most part, and in both his Churches, to preach every Year thirteen Sermons; and a Rector and Vicar are both upon the same Foot by Statute Law; only the Vicar is sworn to Residence, the Rector is not: But this Oath is with a Condition, *nisi aliter dispensatum fuerit*; so that if the Vicar be dispensed with, there is, in this Respect, no Difference between them.

3. By the same Statute 'tis enacted, that if any Person having one Benefice with Cure, &c. being of the yearly Value of eight Pounds or more, shall accept another with Cure, and be instituted and inducted into the Possession thereof, that immediately

mediately after such Possession, the first Benefice shall be void, and the Patron might present another; and that his Presentee was to have the Benefit of the same, as if the Incumbent had died or resigned, and that any Licence, Union, or Dispensation to the contrary should be void. 'Tis true, the Statute is, that the Person must be instituted and inducted into the second Living; but yet a bare Institution, without Induction, will make an Avoidance: For otherwise, a Man may get Institution to several Benefices, and hinder other Persons to be presented, and by getting Sequestrations of the Profits, may not only defeat this Act, but all Canons made against Pluralities.

A bare Institution enough to make an Avoidance.

4. This had been an excellent Law against Pluralities, and all Dispensations to obtain them, if it had gone no further; but there being about three thousand four hundred Benefices in England, of ten Pounds *per Annum* in the King's Books, by the latter Part of this Statute, there are so many Qualifications to be a Pluralist, that the Nobility may qualify above one thousand Chaplains, besides those of the King, and probably as many may be qualified by Birth and Dignities, which in a great Measure eludes the Force and good Intentions of this Act. *Vide* the Act. For it seems clear, that the Parliament chiefly had Regard to the Poverty of small Benefices, because the Act doth not make the second Living void, where the first is under eight Pounds *per Annum*, that is according to a Valuation made *Anno* 26 *H. 8.* and then returned into the Exchequer, and now in the First-Fruits Office; and not according to the real Value; for the Livings which are worth fifty Pounds *per Annum*, are valued in the King's Books at eight Pounds and no more; though some Books are to the contrary; as *Noy's Reports* 38. *Cro. Eliz.* 853. The Damages recovered in a *Quare impedit* shall be tried according to the real Value, because 'tis against a Wrong-doer, to the Prejudice of another Person. But Archdeaconries, Chancellorships, Chantorships, Deaneries, Prebends in Cathedral or Collegiate Churches, Parsonages, where there is a Vicar endowed, are not comprehended in this Act under the Name of Benefices with Cure.

Many Qualifications to elude the Statute against Pluralities.

5. *N. B.* If a Clergyman hath Dispensation to hold two Benefices with Cure, &c. and afterwards he accepts a third, if the Dispensation is particular, that is, if it expresses the very Benefices which are dispensed to be retained, then if he hath no other Dispensation, the two first are void; but if he hath only a general Dispensation to hold two Benefices without naming them, then, if he accepts a third, the first is only void. *Noy* 149.

Persons qualified to have Dispensation.

1st, By Retainer or Service.

6. I shall mention in what Manner Persons may be qualified to have Dispensations to hold two Livings; and that is, 1st, by Retainer or Service; 2dly, by Birth; 3dly, by Dignity. *Vide* the Statute.

7. As to Retainer or Service, if a Lord or other Person doth retain his full Statute Number, and likewise some more, those Supernumeraries are not qualified for a Plurality, though they should be first preferred. *Dyer* 312. *Moor* 277, 678. *Cro. Eliz.* 723, 839. 4 *Rep.* 90. *Moor* 561. So if any Peer shall have a double Capacity to qualify Clergymen, as if a Baron should be made Master of the Rolls, he can qualify only according as he is a Peer, and no more; for that is his best Capacity. And if the eldest Son of a Peer retaineth Chaplains in the Life-time of his Father, who afterwards dies, such Retainer shall not qualify those Men, because the Son was not capable to do it at the Time of the Retainer. But if a Baroness, being a Widow, retains two Chaplains, and marries before either of them are preferred to a second Living, this Retainer is good. 4 *Rep.* 118. *b.* 79. And it is to be observed, that these Retainers must be before the Institution to the second Benefice; for if they come afterwards, 'tis too late. 4 *Rep.* 77. *b.*

2dly, By Birth.

8. Qualification by Birth, is where the Clerk is Brother or Son of any Temporal Peer, or the Son of any Knight born in Marriage, he may have a Dispensation to hold two Livings; so that the Son of a Knight hath in this Respect a greater Privilege than the Son of a Baronet, because that Dignity was not created when that Statute was made.

3dly, Qualification by Dignity.

9. Qualification by Dignity, is where Persons are admitted to the Degrees of Doctors and Bachelors in Divinity, or in the Civil Laws in either of our Universities.

What qualifies a Lord's Chaplain.

10. In all those Cases where a Person is qualified by Service, he must carry his Testimonial or Retainer, under the Hand and Seal of his Lord, to the Master of the Faculties, who is to make out the Dispensation, and this must be sealed afterwards under the Great Seal; and then he may apply himself to the Bishop of the Diocese for Institution, and not before; for the first Living is void upon the Institution to the second.

C H A P. X.

Of Simony.

1. A Church, notwithstanding Institution and Induction had, Stat. 31 El. c. 6. set forth. may remain void by the Act of the Law, by the Incapacity of the Presentee, because of some Simoniackal Contract preceding the Presentation to it, and upon which the Presentation is made. For, by Stat. 31 El. c. 6. 'tis enacted, That if any Person, for any Money, Reward, Gift, Profit, or Benefit, directly or indirectly, or for or by Reason of any Promise, Agreement, Grant, Bond, Covenant, or other Assurance for any Money, Reward, Gift, Profit, or Benefit whatsoever, directly or indirectly, shall present or collate any Person to any Benefice with Cure of Souls, Dignity, Prebend or Living Ecclesiastical, &c. or give, or bestow the same, for, or in Respect of any such corrupt Cause or Consideration, that then every such Presentation, Collation, Gift, and Bestowing; and every Admission, Investiture, Institution and Induction thereupon, shall be utterly void, &c. And the Queen, her Heirs and Successors, shall presently collate, &c. for that one Turn only.

2. And every Person that shall give or take any such Sum of Money, &c. or that shall take or make any such Promise, &c. shall forfeit and lose the double Value of one Year's Profit of every such Benefice. And the Person so corruptly taking any such Benefice, shall thereupon, and from thenceforth, be adjudged a disabled Person in Law, to have and enjoy the same Benefice, &c.

3. And further, if any Person shall, for any Sum of Money, &c. *ut supra*, admit, institute, &c. instal, induct, invest or place any Person in or to any Benefice with Cure, &c. that then every Person so offending, shall forfeit or lose the double Value of one Year's Profit of such Benefice, &c. and that the said Benefice, &c. shall thenceforth be void; and the Patron or Person to whom the Advowson, &c. shall and may, by Virtue of this Act, present or collate, &c. as if the Person were naturally dead, but no Lapse is hereby to incur 'till six Months after Notice.

4. And if any Incumbent with Cure of Souls, do or shall corruptly resign or exchange the same, or corruptly take for resigning or exchanging the same directly or indirectly, any Pension, Sum of Money, or Benefit whatsoever, that then the Giver and Taker of any such Sum, &c. corruptly, shall lose

lose double the Value of the Sum so given, taken or had, the one Half to the Queen, &c. and the other to him who will sue for the same in any Court of Record, &c.

5. And further, if any Person shall receive or take any Money, Fee, Reward, &c. for or to procure the ordaining or making of any Minister, &c. giving any Order and Licence to preach, shall forfeit forty Pounds, and the Minister so made ten Pounds.

6. And if such Minister within seven Years next after such corrupt entering into the Ministry, &c. shall accept or take any Benefice, Living, or Promotion Ecclesiastical, the same Living, &c. after Induction, &c. shall be void, and the Patron may present, &c. as if the Party so inducted were naturally dead; the one Half of the Forfeitures to be to the Queen, her, &c. and the other to the Informer, &c.

No Mental Simony in our Law.

7. Mental or Intentional Simony is not punishable, either by the Common or Statute Law, whatever it may be by the Canon; for to make it Simony by our Law, there must be actual Payment of Money, or a Contract to pay it.

Penalty on Patron taking;

8. By this Statute, the Patron is not only to lose his Presentation *pro hac vice*, but he is also to forfeit double the Value of the Living, according to the utmost Value; and this he forfeits upon a corrupt Contract only, though the Clerk is not presented: But the King is not to have the Presentation, unless the Clerk is actually presented; and in such Case, if he dies incumbent, the King shall not lose his Presentation, because it was void, and the Church was never full of him. He who gives or takes such Reward or Assurance, forfeits double the Value of one Year's Spiritual Promotion, and the Person corruptly taking such Promotion, shall be disabled to enjoy the same; so that this Clause takes in both Patron and Incumbent.

on Person giving.

Cases of Simony.

9. The Words of the Statute are, that the Person corruptly taking a Promotion, shall be disabled to enjoy the same. Now this Clause being so very penal to the corrupt Taker, it hath been a Question, whether a Person can be said to take a Benefice corruptly, who is not *Simoniacus*, but only *Simoniace promotus*; that is, who is admitted to it upon a corrupt Presentation, to which he was not privy nor consenting. Lord Coke in his 3d Institute, 134, tells us, that such a Person is not disabled by the Statute: But he says, the Living is void; and if the King, whose Turn it is, will then present him, 'tis good, and he shall enjoy that Benefice; and *Butler and Baker's Case* is cited in the Margin of the 3d Inst. to prove it. This Case is reported by Justice Croke, and Sergeant Moor, in which it appeared, the Incumbent did not know the corrupt Agreement till after he was inducted; and yet he was disabled to enjoy that Living. *Cro. Eliz.* 788.

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913. But this ~~must~~ be taken only that the Presentation is void, for a Man can never be said to be corruptly taking, who is not privy to the corrupt Agreement.

10. But there may be Simoniacal Promotion, where neither the Patron nor the Clerk are privy to it; as if a Friend of the one give Money to a Relation of the other, to procure him to present that Clerk; in such Case, the Right of Presentation will be vested in the King, *pro hac vice*. *Sid.* 329. 'Tis true, Justice *Windham* was against the Judgment; because the Patron's Right might be defeated by Collusion between two Strangers, which he held to be very unreasonable. But the Law in this is now in some Sort altered in Favour of all Patrons not guilty of such Simony, and their Clerks, for which see *Stat. 1 W. & M. c. 26. viz.* when the Simoniac is dead, &c. For much Matter concerning Simony, see the Case of the *Bishop of St. David's v. Lucy*, 1 *Lord Raymond* 447.

11. If the Clerk himself contract with the Patron for the next Presentation, when the Incumbent is sick, and for that Purpose that it should be granted to a Friend, who upon the Death of the Incumbent presents that very Person, this is Simony. *Hob.* 165. *Cro. Eliz.* 686. So if a Stranger, or Relation of any Clergyman, during the Sickness of the Incumbent, agrees with the Grantee of the next Avoidance, to present him, and accordingly he is presented; this is Simony, though the Clerk is not privy to the Agreement; *a fortiori*, where he is a Party and knows. But if the Father (the Incumbent of the Church being sick) purchases the next Avoidance, in the Presence of his Son, with an Intent to present him, and doth present him, after the Incumbent's Death, it seems the better Opinion that this is not Simony, as was adjudged by three Justices (according to *Cro. Eliz.* 685.) against *Anderson*, C. J. upon this Reason, that the Father is bound by Nature to provide for his Son. And *Anderson* admitted, that this Contract with the Father, with an Intent to present the Son, without the Privy of the Son, would not have been Simony. It is to be remembered also, that according to Lord *Hobart*, if in the Grant of the next Avoidance it appears, that it was to the Intent to present his Son, and it is done accordingly, it is Simony, *ideo quære*, and why it is lawful and usual to purchase the next Avoidance of Churches.

12. But if a Father, upon the Marriage of his Daughter, covenants to pay a Portion, &c. and there is a distinct Covenant, that he will procure the Son-in-Law to be admitted to such Benefice upon the next Avoidance, this shall not be intended to be Simoniacal, because the Covenant had no Dependence upon the Marriage; it was an intire Covenant by itself, and not made in Consideration of Marriage; for if it had, then it would have been Simony; but it may be made so by a

Cases of Si-
mony.

special Averment, shewing that it was Simoniacal. Like to this was a Case *Anno 5 W. 3.* where the Incumbent covenanted with the Patron, to resign by all lawful Means at his Request, so that he might present again; and the Patron covenanted to pay the Incumbent an hundred and fifty Pounds on such a Day, in Lieu of the Tithes: This was held to be a distinct Covenant, and not Simoniacal, without a special Averment. 1 *Lut.*

13. A Promise to give Money, in Consideration the Plaintiff would endeavour to procure the Person to be Rector of such a Church, is Simoniacal. *Jones 341.*

14. If the Patron takes a Bond of the Clerk, to pay so much Money every Year, towards the Maintenance of the last Incumbent's Son at the University, and whilst he is unpreferred, or to his Widow; this is not Simony, for these are charitable Actions. *Noy 142.* If the next Presentation is granted to a Clergyman, who gives Bond to pay for it when the Church becomes void, 'tis Simony. *March 158.* If the Clerk gives a Bond to pay one hundred Pounds *per Annum*, to the Patron, and an Action of Debt is brought upon this Bond, and the Defendant exhibits a Bill in Equity to be relieved, setting forth, that the Bond was given upon a Simoniacal Agreement: After the Defendant had answered, this Bill was admitted as Evidence to prove the Simony. *Sid. 221.*

15. If a Clerk agrees with a Stranger to procure the Grantee of the next Avoidance to surrender to another, and to influence the Surrenderee to present him when the Church is void, which was afterwards done, this is also Simony. 2 *Brownl. 7.*

Forfeiture of
admitting one
Simoniacally.

16. By the Statute, the Person who admits, institutes or inducts a Clergyman for any Reward or Assurance, forfeits double the Value of one Year's Profits of the Living, and the Admission and Institution are void, and the true Patron shall present again, but no Lapse shall incur upon such Avoidance, till six Months after Notice given by the Ordinary to the Patron.

17. If two Clergymen agree to exchange Livings, and one promiseth his Patron, that if he will present the other, he shall demise the Tithes to him at such a Rent, this is Simony, if the Lease be afterwards made pursuant to that Agreement, though the Lessor was not privy to it when it was made. And as all corrupt exchanging Benefices, so likewise all corrupt Resignations are prohibited by this Statute.

A Presentation
on a Simoni-
cal Contract,
void as to all
Persons inter-
ested in the
Benefice.

18. Upon the whole Matter, a Presentation upon a Simoniacal Agreement is void, as to all Manner of Persons who have any Interest in the Benefice, except the Patron, who is to lose his Right of Patronage *pro hac vice*, for that is vested in the King, and he may present without any Sentence of Deprivation. 'Tis void as to the Ordinary, for he is bound to admit

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admit the King's Presentee, and no Lapse can incur, where the Right of Presentation is vested in him; but if the Patron was not privy to the Simony, and the Clerk only is *Simoniacus*, there the Ordinary cannot collate by Lapse, till after six Months Notice given to the Patron. 'Tis void as to the Clerk, without a declaratory Sentence, though he was not privy to it; for he was *Simoniace promotus*, though he was not *Simoniacus* himself; and in such Case he is disabled to hold the Benefice which was got by that Means; but if he is privy to the Simony, then he is made for ever incapable to hold any Spiritual Promotion; and though the King should promote him to the same Benefice, with a *Non obstante* to the Simony, or if he pardon it, yet he can have no Title, because the King cannot enable him whom an Act of Parliament hath disabled; and the Pardon only discharges the Punishment, as to the Forfeiture of the double Value, and can never enure to settle him in a Benefice, which was not full by Reason of the Simony. 'Tis void as to the Parishioners; for if the Parson sues for Tithes, they may plead that he is not Incumbent; for he hath no Right to the Profits, from the Time the Church became void, nor at any other Time; but all those are due to the Clerk whom the King should present, even from the Time of the Avoidance; because the preceding Clerk being inducted upon a Simoniackal Presentation, the Church was never full of him; but it still remained void by Virtue of this Statute. And if the King should not present during the Life of the Simoniack, but he dies Incumbent, and then the true Patron presents, his Clerk thus presented and admitted, will be intitled to all Profits since the last Avoidance by the Death of the legal Incumbent.

19. Before Stat. 1 W. & M. c. 16. the King might remove the Patron's Clerk, and in such Case the Presentee could claim only the Profits from his Institution; but now since this Statute, if the Person who was promoted by Simony should die Incumbent, his Offence should not be prejudicial either to a Patron who was not privy to it, or to his Clerk, upon Pretence of a Lapse, or otherwise howsoever; unless the Patron or the Clerk were convicted of Simony in the Life time of such Incumbent. And by the same Statute, Leases made *bona fide*, by a Person who came in by Simony, to any Lessee for a valuable Consideration, and who is not privy to it, nor had any Notice thereof, shall not be avoided.

If Simoniack die Incumbent, his Offence shall not prejudice.

Leases by Simoniackal Persons not avoided.

20. *N. B.* Where a Patron presents, who is not privy to the Simony of his Clerk, he need not be named in a *Quare Impedit*; as for Instance; if the Clerk contracts with a Friend or Relation of the Grantee of the next Avoidance, and thereupon gets the Presentation, in this Case the King may declare against the Ordinary and the Incumbent, for the Patron's Title

is not in Question; he had the Benefit of his Presentation; 'tis the Clerk who is the Offender, and he ought to be removed.

Grant of the next Avoidance for Reward, is Simony.

21. By a Statute made 12 Ann. c. 12. if any Person, for any Reward, in his own Name, or the Name of any other, shall take or accept the next Avoidance of, or Presentation to a Benefice with Cure of Souls, and be presented thereto, the Presentation shall be void, and such Agreement deemed a Simoniack Contract, and the Crown may present for that Time, &c.

22. The Oath against Simony runs thus, I *A. B.* do swear, that I have made no Simoniack Payment, Contract, or Promise, directly or indirectly, by myself, or by any other to my Knowledge, or with my Consent, to any Person whatsoever, for or concerning the Procuring or Obtaining the Rectory of *M.* in the Diocese of *W.* nor will at any Time hereafter perform or satisfy any such Kind of Payment, Contract, or Promise made by any other, without my Knowledge or Consent.

So help me God, &c.

23. It seems reasonably to be doubted whether the foregoing Oath be lawful at this Day, because of the Statute, which takes away all Oaths *ex Officio* in the Spiritual Courts, &c. Stat. 13 Car. 2. c. 12.

24. It is good Advice to the Purchaser of the next Presentation, (whether he designs it for his Son or a Stranger.)

1. That he make the Contract, when the Incumbent of the Church is in Health, or at least, not in Danger of Death:
2. That he does not declare his Intention of Kindness to the Person whom he intends to present:
3. That the intended Clerk be not present at the Contract, nor named in the Deed, by which the Power of Presentation is granted; for by observing these Cautions, he may avoid expensive and hazardous Questions in Law.

Before I quit this Subject, it may not be amiss to mention a few Things relating to Bonds of Resignations; of which in the next Chapter.

C H A P. XI.

Of Bonds of Resignation.

I Find, that a Bond with a general Condition to resign a Church Benefice upon some Months Notice is good, for there is a solemn Judgment given in the Court of King's Bench, that such a Bond is good; because there is nothing bad in the Condition, that being only to resign upon Notice. And that which gives a greater Authority to this Judgment is, that it was affirmed upon a Writ of Error in the Exchequer Chamber, where all the Judges were of Opinion, that it was lawful for a Man to bind himself in a Penalty to resign, because that may be for good and valuable Purposes, as to resign if he take another Benefice, or to resign when the Son of the Patron comes of Age. *Jones ver. Lawrence*, 2 Cro. 248, 174. And if he do not resign upon Request, he is subject to the whole Penalty of the Bond; for Simoniacal Bonds, Contracts, &c. are not made void by this Act, but only the Presentment, &c.

Of Bonds of Resignation.

2. About nineteen Years afterwards, the like Case came in Question again in the same Court, between *Babington* and *Wood*, and the like Judgment was given for the Bond upon a Demurrer to the Declaration. *Cro. Car.* 184. *Jones* 220. About nine Years after that Case of *Babington* and *Wood*, the like Question was debated between *Carey* and *Yeo*, and that was upon a Demurrer to the Declaration, where the Action was brought upon such a Bond; and the Court held the Condition to be good, except it had been made for a Simoniacal Purpose; and if so, it ought to have been pleaded and averred, *1 Rol. Abridg.* 416. *Moor* 641. So that the Law seeming to be so well settled, about thirty Years afterwards, when an Action of Debt was brought upon a Bond with such a Condition between *Watson* and *Baker*; the Defendant was advised not to demur to the Declaration, and insist that the Bond was Simoniacal; but he pleaded *in forma juris resignavit*, and that the Bishop accepted his Resignation, *Watson and Baker*, *Sid.* 317. *Raim.* 175.

Cases of them;

3. By *Holt*, Ch. Just. in the Case of *Swaine* and *Carter*, *3 W. 3. B. R.* a Resignation-Bond comes as near Simony as can be; see *Comb. Rep.* 394. notwithstanding which Opinion, it is generally held at this Day, that such Bonds are valid in Law and Equity. But the Chancery will restrain the Patron that he shall not make any ill Use of such Bond, as by obliging the Incumbent to take an Under-Rate for his Tithes, or the like.

Resignation
must be ac-
cepted by the
Bishop.

4. Upon the whole Matter, these Bonds to resign generally upon Notice have been held good, both in Law and Equity. I shall only add, that if such a Bond is put in Suit, and the Defendant pleads *Resignavit* on such a Day to the Bishop, and that he accepted it, this shall be tried by the Country, and not by Certificate from the Bishop. *Sid.* 387.

5. And it is to be observed, that a Benefice with Cure cannot be void by the sole Act of the Party, *viz.* by Resignation, without the Acceptance of the Bishop, because he is to give Notice to the Patron that he may present again; but if he refuses to accept it, then, notwithstanding the Resignation, the Incumbent continues so still.

The Condition of a Bond of Resignation.

6. **W**HEREAS A. B. is within a short Time to be presented, instituted and inducted to the Church of L. in the County of B. if therefore the said A. B. shall after his Admission, Institution and Induction thereunto, at any Time, upon the Request of J. S. his Heirs, Executors, or Administrators, resign the said Church or Rectory of L. to the Ordinary or Guardian of the Spiritualities of the Diocese of S. for the Time being; so that the said J. S. his Heirs or Assigns, Patrons of the said Church, may present again to the same, discharged of all Incumbrances done or suffered by the said A. B. that then, &c.

CHAP. XII.

Of Tithes.

Tithes to
whom pay-
able.

1. **T**HE Maintenance of the Parochial Clergy is, 1. By the Glebe, which takes in the House. 2. By Offerings. 3. By Tithes. All Tithes are due of common Right to the Parson or Rector of the Parish where they arise (See above, Chap. 1. §. 27, 28.) but by Endowment or Prescription they may belong to the Vicar; and the Parson of one Parish may prescribe to have a Portion of Tithes separately and divided in the Parish of another, probably for the Reasons contained in the above Sections of Chap. 1.

2. If an Impropriator, Parson, or Vicar leases his Glebe Land, and does not grant the Tithes thereof, the Farmer or Occupier

Occupier shall pay Tithes to the Impropiator, Parson, or Vicar; and if a Patron sows his Land, and sells the Corn growing, the Buyer shall pay Tithes of it to the Parson. But if a Parson purchases Lands in the same Parish whereof he is Parson, and leases out his Tithes, he shall pay Tithes to this Farmer of them. 11 Co. 13, 14. 1 Roll. Abr. 655. 1 Cro. 191.

3. A Vicar upon a general Endowment shall not pay Tithes to the Parson, of his Glebe, if he keeps it in his own Hands. Neither shall the Parson pay the small Tithes of the Glebe Lands in his own Hands, to the Vicar, who is endowed of all the small Tithes in the Parish: But this is otherwise, if the Glebe be in the Hands of a Tenant. And if the Endowment had been by express Words of the small Tithes of the Glebe of the Parsonage, the Parson should pay small Tithes to the Vicar, though the Glebe was in his own Hands.

4. If a Parishioner sows his Lands, and before Severance the Parson dies, the Successor shall have the Tithes from the Death of his Predecessor: But if the Corn, &c. is cut down, the Executor of the Deceased shall have the Tithes, though the Corn, &c. was not actually tithed before the Death. And if a Parson sows his Glebe, and dies, his Executor, &c. shall have the Corn, but he shall pay Tithes to the Successor. If the Glebe be in the Hands of a Tenant, and the Parson dies after Severance of the Corn, and before Rent is due, neither the Executor nor Successor is intitled to the Rent, but the Tenant may retain both it and the Crop, unless there was a Special Covenant to apportion in Favour of the Executor. It hath been resolved, that a Parishioner need not give Notice to the Parson of his setting forth of Tithes. Comb. 128. but see Rol. 643. 2 Rol. 302. Degg's Parson's Counsellor 220. Hob. 107. That a Custom for Tithing without View, is ill. Quere the Difference. After the Parishioner hath set out the Tithe, if the Parson do not carry it away in convenient Time, the Parishioner must not put in his Cattle, but may have an Action on the Case. Shapcott v. Mugford, 1 Ld. Raym. 187, &c.

Q. Stat. 11.
G. 2.

5. Tithes are the tenth Part of the yearly Increase arising from Profits of Lands, Stock upon Lands, and the Industry payable of the Parishioner, payable by every one that hath Things titheable, if he cannot shew a special Exemption to the contrary. They are payable out of the same Land, &c. but once in the Year, unless Custom hath prevailed to the contrary. For by Custom, Tithes may be demanded of such Things as are not titheable of common Right, as of Fish, and Conies to be sold, but not of those spent in the House. The general Rule given in this Section is the Common Law: But there are infinite Instances where Custom prevails in some Places

for the Benefit, in others to the Disadvantage of the Incumbent; and such Customs generally prevail against the Common Law. The like Rule holds good for determining in some Places what shall be called great, what small Tithes, in the Case of Parson and Vicar; the Endowment of the Vicar ordinarily consisting of small Tithes, as hath been said.

Predial, Personal, Mixed.

6. Tithes are of three Kinds, Predial, Personal, and Mixed. 1. Predial, those which arise immediately from the Land, spontaneously, or by Labour of Man, as Grass, Grain, Hay, Wood, &c. these are payable without deducting any Charges. 2. Personal, such as arise only from the Labour and Industry of Man, (common Day-Labourers excepted) being the Tenth of his clear Gains in his Profession or Occupation, Charges deducted, these are only paid by Custom, and perhaps no where except for Mills, or Fish caught at Sea. 3. Mixed, are those which arise mediately from the Ground, but immediately from Animals, as Colts, Lambs, Wool, Eggs, &c. they are payable where they arise. The Spiritual Court has a general Jurisdiction of Tithes; therefore where a Person sued there for Tithes, has any special Matter to plead which deprives them of their Jurisdiction, he ought to plead it there; and if they refuse to admit the Plea, a Prohibition will be granted. *Dick v. Brown*, 2 *Ld. Raym.* 835.

Tithes great and small.

7. Tithes are also commonly divided into great and small; the great being Corn, Hay, and Wood; the small are all other Predial Tithes, and Personal and Mixed Tithes: But (as is said above, §. 4.) Custom varies this Rule in many Places. Wood, being Timber of twenty Years Growth or upwards, is discharged of Tithe by an Act of Parliament, and so is barren Land of its own Nature barren; and the Corn, &c. produced there for the first seven Years of its Improvement. And so are Mills erected before the Memory of Man, and which never have paid Tithes. And it is said that the tenth Toldish is no where paid, and that this Tithe is only a Personal Tithe, and to be paid with a Deduction of Charges. It was argued, whether the Tithe of 26 Acres sown with Flax be a great Tithe or a small, there being 1300 Acres in the Parish. A Case was cited for the Plaintiff, between *Witherington* and *Henden*, in *Scac. Pasch.* 27 C. 2. that Turnips sown in great Quantities are great Tithes. But *Dolben J.* denied that it was so resolved, but that the Tithes remain of the same Nature, whether in Gardens or Fields, and of that Opinion were the rest of the Justices: But they said, if the greatest Part of the Parish should be sown with Flax, perhaps they might alter their Opinion. *Comber.* 209.

8. The Rules already given may generally instruct the Judgment of the Readers; but at the Desire of some of them, we have, in this Sixth Edition, enlarged this Chapter with the

the Addition of an Alphabetical Table. It is to be remembered, that to make a Thing titheable, it is not precisely necessary that the Increase be annual or every Year: Thus Timber titheable, is cut, perhaps, only once in seven, ten, or fifteen Years.

9. Offerings are reckoned to be in the Nature of Tithes Personal, which arise from the Labour of the Parishioners; they are payable according to Custom, either at stated Times, as at *Easter*, or occasionally, as at Sacraments, Marriages, Burials, Churching of Women, &c. Some of them are payable to the Parson, &c. of the Parish where the Party dwells: But it has been adjudged, that the Claim for a Burial was not good when the Corpse was buried in another Parish. *Note*; by an Act passed 8 *Geo.* 2. for rebuilding *Shoreditch* Church, it is enacted, That for every Person who shall, during the Continuance of this Act, (*i. e.* while the Annuities for Lives shall last) die within that Parish, and be buried in any other Ground, &c. there shall be paid for the Use of the said Parish the same Duties, as if such Person had been buried in the Parish; and after the Determination of all the Annuities to be granted by that Act, the ancient and accustomed Rates for Funerals are only to be paid as specified in an Indenture mentioned in the Act.

Offerings,
Dues, &c.

10. By Stat. 2 & 3 *Ed.* 6. c. 13. no Person shall take or carry away the Tithe, till set out or agreed for with the Parson or other Proprietor thereof, upon Pain of Forfeiture of the treble Value; to be recovered in the Temporal Court by Action of Debt (the Forfeiture to the Party grieved.) But if Suit be brought in the Spiritual Court, double the Value shall be recovered, besides Costs of Suit. But in the Temporal Court, nothing is to be recovered besides the treble Value; neither the Tithes themselves, nor any Satisfaction for them; nor could either Damages or Costs be recovered with the treble Value, till Costs were particularly given by Statute 8 *W.* 3. c. 11. where the single Value shall not exceed six Pounds thirteen Shillings and four Pence. And an Executor may have an Action upon this Statute for Tithes not set forth during the Life of the Testator. Statute for due setting out of Tithes.

See above,
Sect. 4.

11. If a Quaker refuse to pay Tithes, or Church Rates, by the Statute of 7 & 8 *W.* 3. c. 34. he may be convened before two Justices, who shall examine and determine in all Cases of or under ten Pounds, and levy by Distress in Case of Refusal to pay; and by Statute 1 *Geo.* 1. c. 6. this Act is extended to the Recovery of any Right or Stipend belonging to the Church, &c. or to any Church Rates, with Costs not exceeding ten Shillings. But an Appeal lies to the Quarter-Sessions, where, if Judgment be confirmed, Costs shall be given Method of suing Quakers for Tithes.

What small
Tithes recover-
able before Ju-
stices of Peace.

given against the Appellant. And no *Certiorari* is to be allowed, unless the Title to the Tithes come in Question.

12. And by a Statute made 7 & 8 W. 3. c. 6. made at first for three Years, but afterwards continued for seven Years; and by an Act made 3 & 4 Annæ, c. 18. made perpetual, 'tis enacted, That small Tithes, of or under the Value of forty Shillings, being withheld twenty Days, after Demand, upon Complaint made in Writing to two Justices, neither of which shall be interested, they shall summon the Party in Writing, and determine and adjudge the Case in Writing, with Costs not exceeding ten Shillings; and if the Sum is not paid in ten Days, it shall be levied by Distress by the Constable, having a Warrant from the Justices, and after three Days detaining them, the Goods shall be sold.

13. Complaint to be made within two Years after the Tithes become due, and an Appeal lies to the Quarter-Sessions, whose Judgment shall be final, unless the Title comes in Question. And if Prescription, or a *Modus*, or Composition, be insisted upon, Security must be given to pay Costs if the *Modus* be not allowed; in which Case the Prosecutor is at Liberty to proceed in any other Court. But those who have begun their Suit in the Ecclesiastical Court, are not intitled to the Benefit of this Act. *N. B.* An Ejectment lies of small Tithes, even for an Egg. *Camell v. Clavering*, 2 *Ld. Raym.* 789. *N. B.* Every *Modus* ought to be certain; therefore a *Modus* to pay two Shillings in the Pound of the true improved yearly Rent or Value, is void for the Incertainty. *Startup v. Dodderidge*, 2 *Ld. Raym.* 1158, &c. See there more Instances of the Kind. A *Modus* to pay two Shillings in the Pound of the reserved Rent, bad. *Byne v. Dodderidge*, 1 *Ld. Raym.* 696.

Tithes of Va-
lue generally
sued for in the
Exchequer.

14. But Tithes of any considerable Value are now generally sued for in the Courts of Equity by *English* Bill, and for the most part in the Exchequer; but not upon the Statute for treble or double Value, for there can be no Suit in Equity for the Recovery of treble or double Value; but you may have the single Value with Costs, which, unless the Value of the Tithes be very great, is as good as treble Value without Costs.

How the Lon-
don Clergy
must sue for
their Tithes.

15. But for the *London* Clergy there is Provision made by Stat. 27 H. 8. c. 12. whereby 'tis enacted, That the Citizens should for ever pay to their respective Parsons for every ten Pounds Rent of Houses, Shops, Warehouses, Cellars, and Stables, within the City of *London* and Liberties thereof, one Shilling and four Pence yearly; and for every twenty Pounds Rent, two Shillings and nine Pence yearly; and so according to that Rate. These Dues in this Case cannot be recovered in the Ecclesiastical Court, because the Statute declares how they shall be recovered. *Vide* the Statute. These Dues are to be paid

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paid quarterly, *Easter, Midsummer, Michaelmas* and *Christ-
mas*; and the Lord Mayor, by Advice of Counsel, is to hear
and determine Differences arising upon this Statute, and give
Costs accordingly. And it hath been resolved, that Suits for
these Dues shall be before the Mayor in Writing, and not Pa-
pet. *Nay 130, Meadhouse and Taylor.* And that a Reservation
by a Lessor for Life, upon a Lease made by him for Years,
shall not bind him in Reversion to pay according to that Rate.
And that a Lease for Half a Year, and after for another Half
Year, is a yearly Rent within this Statute. Abby Lands
within the City of *London* and the Liberties thereof, are not
free from the Payment of Tithes within the Statute of 31
H. 8. c. 13. Cro. Eliz. 276. Moor 912.

16. If Rents be continued as they were at the Time of
making the Statute, though upon new Fines, Tithes shall be
accordingly; but if upon new Fines less Rent be reserved, it
shall pay Tithes as it did before. *Cro. Ja. 6. 613. Scuda-
more's Case.* And if no Rent be reserved, nor Fine paid, the
Parson shall have his Tithes according to the Rent at the Time
of the Statute. But if an House hath always been held by the
Owners, and no Rent paid, it shall pay no Tithes within this
Statute. And if the Lord Mayor shall make any Decree
against Law, a Prohibition lies; for the Exposition of all
Statutes belongs to the Judges of the Common Law. But
since the Fire of *London*, some Alteration hath been made con-
cerning the Payment of Tithes, by the Act 22 & 23 *Car. 2.*
c. 15. which provides, that the annual Rent of Tithes in
London, of those Churches which were demolished or burnt,
and which now remain single, or are united, shall be as in the
following List.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Allhallows Lombard-street	110	0	0
St. Bartholomew Exchange	100	0	0
St. Bridget, <i>alias</i> Brides	120	0	0
St. Bennet Finck	100	0	0
St. Michael Crooked-lane	100	0	0
St. Christopher	120	0	0
St. Dionis Back-church	120	0	0
St. Dunstan in the East	200	0	0
St. James Garlick-hith	100	0	0
St. Michael Cornhill	140	0	0
St. Michael Bassishaw	132	11	0
St. Margaret Lothbury	100	0	0
St. Mary Aldermanbury	150	0	0
St. Martin Ludgate	160	0	0
St. Peter Cornhill	110	0	0
St. Stephen Coleman-street	110	0	0
St. Sepulchre			

St. Sepulchre	200	0	0
Allhallows Bread-street, and St. John Evangelist	140	0	0
Allhallows the Great, and Allhallows the Less	200	0	0
St. Alban Wood-street, and St. Olave Silver-street	170	0	0
St. Anne and Agnes, and St. John Zachary	140	0	0
St. Augustine and St. Faith	172	0	0
St. Andrew Wardrobe, and St. Anne Black-fryars	140	0	0
St. Antholine, and St. John Baptist	120	0	0
St. Bennet Grace-church, and St. Leonard Eastcheap	140	0	0
St. Bennet Paul's Wharf, and St. Peter Paul's Wharf	100	0	0
Christ-church, and St. Leonard Foster-lane	200	0	0
St. Edmund the King, and St. Nicholas Acons	180	0	0
St. George Buttolph-lane, and St. Buttolph Bishopsgate	180	0	0
St. Lawrence Jury, and St. Magdalen Milk-street	120	0	0
St. Magnus, and St. Margaret New Fish-street	170	0	0
St. Michael Royal, and St. Martin Vintry	140	0	0
St. Matthew Friday-street, and St. Peter Cheap	150	0	0
St. Margaret Pattons, and St. Gabriel Fen-church	120	0	0
St. Mary At-Hill, and St. Andrew Hubbard	200	0	0
St. Mary Woolnoth, and St. Mary Wool church	160	0	0
St. Clement Eastcheap, and St. Martin Orgars	140	0	0
St. Mary Abchurch, and St. Lawrence Pountney	120	0	0
St. Mary Aldermary, and St. Thomas the Apostle	150	0	0
St. Mary le Bow, and St. Pancras Soper-lane, and Allhallows Honey-lane	200	0	0
St. Mildred Poultry, and St. Mary Cole-church	170	0	0
St. Michael Wood-street, and St. Mary Staining	100	0	0
St. Mildred Bread-street, and St. Margaret Moles	130	0	0
St. Michael Queen-hith, and Trinity	160	0	0
St. Magdalen Old Fish-street, and St. Gregory	120	0	0
St. Mary Somerset, and St. Mary Mounthaw.	110	0	0
St. Nicholas Cole-abbey, and St. Nicholas Olave	130	0	0
St. Olave Jury, and St. Martin Ironmonger-lane	120	0	0
St. Stephen Wallbrook, and St. Bennet Sherehog	100	0	0
St. Swithin, and St. Mary Bothaw	140	0	0
St. Vedast <i>alias</i> Foster, and St. Michael Quern	160	0	0

How to be assessed,

17. And those respective yearly Sums are to be for the Maintenance of the respective Parsons in those Parishes, besides the Glebe, and other Perquisites. For the Method of assessing the Rates, see the Act. The Sum assessed must be paid at the four most usual Feasts quarterly, or within fourteen Days afterwards, by equal Payments, to commence from such Time as the Incumbent shall begin to officiate. The Impropiators shall allow what they ought to do before the Fire,

Chap. 12.
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Fire, and such Allowance is to be Part of the Parson's Maintenance. If the Inhabitants refuse to pay, &c. upon Demand at the Premises, the Lord Mayor, upon Oath of such Refusal, may issue out his Warrant, for the Collector, with the Assistance of a Constable, to distrain, &c.

18. The Lord Mayor neglecting, &c. to execute the Powers granted by the Act, the Lord Chancellor or Keeper, or two Barons of the Exchequer, may, by their respective Warrants, do what the other ought to have done. No Court or Judge shall determine any Controversy arising upon the Act, other than the Persons therein authorized. The Wardens and Minor Canons of *St. Paul's* may recover the Duties arising within the Parish of *St. Gregory*, as formerly.

19. And for the better recovering the Sums of Money which shall be due according to the Directions of the Act of 22 & 23 Car. 2. c. 15. assessed upon the several Houses, Buildings, and other Hereditaments, within the Parishes in the said Act mentioned (for making up the Sums of Money which by the said Act are to be paid in lieu of Tithes within the said Parishes) and which are become a real Charge upon the Houses, Buildings, and other Hereditaments, whereupon they are so assessed; so that the Arrears of the quarterly Payments of those Sums, which ought to have been paid by the former Occupiers of those Houses, &c. or which became due when those Houses stood empty, may be levied by Distress and Sale of the Goods of the present Occupiers, which shall be found in or upon the said Houses, &c. observing the Circumstances required by the said Act. A Decree was made by the Lord Chancellor *Harcourt*, assisted by Mr. Baron *Bury* and Mr. Baron *Price*, on the twenty-fourth Day of *December* in the twelfth Year of *Queen Anne*, Anno Domini 1713, between *William Savage* and *Montagu Wood*, Clerks, Plaintiffs, and *Harding* and others Defendants. But the Plaintiffs were first to demand of the Defendants the said several Sums so due as aforesaid, to the End the Defendants might have an Opportunity of paying the said Sums of Money, without further Trouble or Charge. See the Decree.

20. By Stat. 1 Geo. 1. c. 23. a Fund is raised towards providing for the Ministers of the fifty new Churches; which is by a Duty of 3 s. per Chaldron or per Ton, on Coals and Culm brought into the *Thames*, between *Michaelmas* 1724 and *Michaelmas* 1725.

21. By a Statute made 12 Geo. 1. c. 39. the Rector of *St. Mary le Strand* is to have the Interest of two thousand five hundred Pounds, and for a further Maintenance one hundred and twenty-five Pounds per Annum, to be raised by an equal Pound Rate on the Inhabitants, within the District appointed

pointed by the said Parish, and the Rector, Churchwardens and Vestry are impowered to make Assessments, being allowed by two Justices of Peace, &c. and the Sum assessed shall be yearly collected by such Persons as the Vestry or Churchwardens shall nominate, for whom the Parish shall be answerable, &c. *Vide* the Statute.

St. Katherine Cree.

22. By the Statute 13 Geo. 1. c. 35. the Curate of St. Katherine Cree-church, alias Christ-church, London, (after the Year 1734.) is to have 70 l. per Ann. for ever, by Assessment on the Parishioners; the Residue of 150 l. charged on them is to go to Magdalen College, Cambridge, the Rectory being Improprate to the College.

Millbank.

23. By the Statute of 1 Geo. 2. c. 19. a Provision like that for the Rector of St. Mary le Strand is made for the Rector of the new Church near Millbank, Westminster, over and above Fees and Perquisites, payable quarterly in lieu Tithes, &c. subject to some Deductions to the present Curate. *Vide* the Statute.

Spittlefields.

24. By the Statute 2 Geo. 2. c. 10. three thousand Pounds, and one hundred and twenty-five Pounds per Annum, is settled on the Rector of the new Church in Spittlefields, &c. *Vide* the Statute.

Stepney.

25. By the Stat. 2 Geo. 2. c. 30. the like Provision is made for the Rector of the new Church of Wapping, Stepney. *Vide* the Statute.

St. Mary Stratford Bow.

26. The Statute 3 Geo. 2. c. 3. provides for the Rector of the Parish of St. Mary Stratford Bow in Middlesex, viz. three thousand five hundred Pounds, to be laid out in the Purchase of Lands, &c. and forty Pounds a Year to be raised by the Churchwardens upon Pews, &c. *Vide* the Act.

Limehouse.

27. By Statute 3 Geo. 2. c. 17. a Provision of three thousand five hundred Pounds, and sixty Pounds per Annum is appointed for the Rector of the new Church at Limehouse. *Vide* the Statute.

Bloomsbury.

28. By Statute 3 Geo. 2. c. 19. the Interest of the Sum of three thousand Pounds, and one thousand two hundred and fifty Pounds, to be raised by the Parishioners, is allotted for the Rector of the new Church near Bloomsbury Market. *Vide* the Act.

Deptford.

29. By Statute 3 Geo. 2. c. 23. the Sum of three thousand five hundred Pounds, and seventy Pounds per Annum, payable by the Churchwardens, &c. is ordered for the Rector of the new Parish of St. Nicholas Deptford, in the Counties of Kent and Surrey. *Vide* the Act.

Horshlydown.

30. By Statute 6 Geo. 2. c. 11. the Sum of three thousand five hundred Pounds is to be laid out in Lands, &c. for a Provision for the Rector of the new Church of Horshly-down in the Borough

Borough of *Southwark* in *Surrey*, and sixty Pounds *per Annum*, to be raised on the Parishioners. *Vide* the Act.

31. By Statute 6 Geo. 2. c. 19. a Chapel in *Tiverton* in *Tiverton*. *Devonshire* is made a perpetual Cure, and sixty Pounds *per Annum* provided for the Ministers. *Vide* the Act.

32. And by Statute 6 Geo. 2. c. 21. a Provision of three thousand five hundred Pounds, to be laid out in Lands, &c. is made for the Rector of the new Church near *Old-street* in the Parish of *St. Giles, Cripplegate*, and that Part of the said Parish, which is called the Lordship Part, is made a distinct Parish, and one hundred and twenty Pounds *per Annum* is also provided for the Rector, chargeable on the Parish, and an House is to be erected for his Habitation. *Vide* the Act.

33. *Acorns, Mast, or Pannage*, if severed and sold; not if they drop, and the Hogs eat them. But if severed and given to Swine, the Tenth of the Value is due.

After-moath, not, unless by Custom.

2 Inst. 643.

11 Co. 49.

Hert. 27.

2 Inst. 652.

Danv. Abr.

Dimes 589. Contra 1 Roll. Abr. 640.

After-Pasture, not, unless by Custom.

2 Inst. 621, 652.

Danv. Abr. 590.

Agistment of barren Cattle upon Lands which pay not other Tithe that Year; nor the Cattle profitable to the Parson by Milk, Wool, or Labour. Custom or Prescription often adjust the Payment. This is to be understood as to Labour, &c. in the same Parish. *Scoles v. Lowther*, 1 *Ld. Raym.* 129, 130. *Agistment* is *de Jure* titheable, therefore an Hundred, &c. cannot prescribe *in non decimando* with Respect to it, as they may with Respect to Wood. *Hicks v. Woodson*, 1 *Ld. Raym.* 137.

Danv. Abr. 600,

601, 614.

Contra *P. N. B.*

53.

Agreement for Tithes by the Parson does not bind his Successor.

Alders, though above twenty Years old; because not Timber.

2 Cro. 199.

Ash, not, if above twenty Years Growth.

2 Inst. 643.

Asp, not in Countries where used for Timber, if above twenty Years Growth.

2 Inst. 643.

Barley. See *Grain*.

Bark, Root, and Germins, growing upon the ancient Stock, not, if the Tree was Timber.

11 Co. 49.

2 Inst. 643.

Barren Land, not, unless barren by Accident or ill Husbandry. But if naturally barren, and improved by Husbandry, 'tis free of Corn Tithe for seven Years, by Stat. 2 & 3 Ed. 6. c. 13. but not Wool, &c. which it formerly paid. See at the End of this Chapter.

2 Inst. 654, 656.

1 Cro. 475.

Bawks, or Head-lands, not, if only large enough for turning the Plough; otherwise of larger Head-lands.

2 Inst. 652.

1 Roll. Abr. 646.

Beech,

- Danv. 589. *Beech*, except when used for Timber, by Stat. 45 E. 3. c. 3.
 3 Cro. 404, 559. *Bees*, by the Tenth Weight and Measure of Wax and
 F. N. B. 51. Honey.
Beans. See *Grain*.
 1 Cro. 1. *Birch*, as *Alders* above.
 2 Inst. 651. *Bricks*, not, they not being an Increase, but the Land it-
 1 Cro. 1. self.
 Danv. 597. *Broom*, unless burnt in the Occupier's House of Husbandry
 in the Parish, or discharged by Custom.
 Raym. 277. *Calves*, when weaned and able to live like the Dam. The
 Payment may be directed by Custom; a Tenth of the Price
 for which sold may be a good Custom.
 2 Rol. Abr. 646, *Cattle* feeding upon Wastes where the Bounds of Parishes
 647. are unknown, to the Parson where the Owner dwells: But
 not, if kept for Plough or Pail. See *Agistment*.
Chalk. See *Bricks*.
 1 Cro. 609. *Cheese*, by Custom only where Tithe is not paid of the
 1 Rol. Abr. 651. Milk.
 2 Rol. 83. *Cherry-Trees*, unless where used for Timber.
 1 Rol. Abr. 642. *Chickens*, not, where Tithe Eggs are paid.
Clay. See *Bricks*.
Coals. See *Bricks*.
Colts, as *Calves* above.
 Danv. 583. *Conies*, by Custom, if sold; not for those spent in the House.
 1 Rol. Abr. 644. *Corn* of all Sorts; and the Parishioners are to reap and bind
 1 Sid. 283. it, or otherwise prepare it for carrying home according to the
 Husbandry used in that Country.
Cows, by their Milk and Calves.
 2 Inst. 651. *Deer*, not, unless by Custom; being *fera Nature*.
 11 Co. 49, 81. *Dotards*, i. e. decayed Trees, not; having been once pri-
 2 Inst. 643. viledged.
Doves. See *Pigeons*.
 1 Rol. Abr. 642. *Eggs*, not; when the Chickens tithed.
Elm, as *Ash* above.
 1 Rol. Abr. 642. *Fallow Ground*, not; unless kept for several Years together
 beyond the Course of Husbandry.
 2 Inst. 652. *Fern*, not.
Fenns, when drained.
 Danv. 583, *Fish* taken in the Sea, by Custom; the like in common
 584. Rivers; but in Ponds and private Rivers a predial Tithe.
Flax, a small Tithe; and payable by Statute at 5 s. per
 Acre, by 11 & 12 W. 3. c. 16. and see 6 Ann. c. 28. 1 G. 1.
 c. 26.
Fleeces. See *Wool*.
 1 Rol. Abr. 655. *Forest*, in the Hands of the King, not; otherwise, if in
 3 Cro. 94. the Hands of a Subject, or disafforested.
Fowls tame, to pay according to Custom, either in Eggs or
 Young.

Fruit,

Fruit, as *Apples*, &c.

Doc. & Stud.

Fruit-trees, not.

Dial. 2. c. 55.

Fuel (spent in the House), not.

2 Inst. 621,
652.

Furzes. See *Fuch*.

Gardens, which includes all Herbs and Plants.

Geese. See *Fowl*.

Grain, commonly by the Tenth Shock, Sheaf, or Cock.

Grass mowed, the Manner is regulated by Custom; but if out, and quickly after given to feed the Cattle used in Tillage, where they have not sufficient Pasture, not titheable. 1 Rol. Abr. 644.
645.

Gravel. See *Bricks*.

Hay, at such Time in the making as has been customary in the Parish; or even by measuring out the Tenth Part of the Grass growing. Hob. 250.

Hazle, as *Beech*.

Head lands. See *Barwks*.

Heath. See *Barren Land*.

Hemp. See *Flax*.

Herbage. See *Agistment*, not, where Land had Corn that Year. 2 Inst. 652.

Holly, as *Beech*.

Honey. See *Bees*.

Hops, and not liable to a *Modus*. The Polls not titheable. 1 Rol. Abr. 644.

Horses. See *Agistment*, *Grass*.

1 Sid. 283, 443.

Houses, in *London*, only by Statutes 37 H. 8. c. 12. 23

11 Co. 16.

C. 2. c. 15. and in some other Cities and Boroughs by Custom. 2 Inst. 659, 660.

2. if in Lieu of Land on which they are built in Country Places. See 2 & 3 E. 6. c. 13. Hob. 10.

Kids, as *Calves*.

Lambs, as *Calves*. But there is a Variety of Customs concerning this Tithe; and the Farmer must not attempt to defraud the Custom. 1 Rol. Abr. 652.
3 Cro. 403.

Lead. See *Mines*.

Loppings; but not of Timber-trees. See *Wood*.

Doc. & Stud.

Maple, as *Beech*.

Dial. 2. c. 55.

Maft, as *Acorns*.

11 Co. 48.

Milk, where no Tithe paid of Cheese. Custom governs here; to be brought, viz. every Tenth Meal to the Parson's House, unless there be another Custom. But Milk for the Pail, i. e. for the family in the Parish, is not titheable; otherwise if carried into another Parish, though spent in the Family. *Scoles v. Lowther*, 1 Ld. Raym. 129.

2 Inst. 643.

Mills for Corn, the Tenth Toll-dish. Other Mills, as Paper Mills, not, unless by Custom; nor Corn-Mills erected before 9 E. 2. or so presumed to be, as being erected before the Memory of Man. But 2. Whether Corn-Mills a personal Tithe, and Charges to be deducted; the Custom is the Rule. Danv. 590.

2 Inst. 621.

Mines, only by Custom; for, not an Increase.

2 Inst. 551.

E

Modus, F. N. B. 53.

- Modus*, of this before.
- 2 Inst. 491. *Mortuaries* are not Tithes, but due by Custom only; and settled by Stat. 21 H. 8. c. 6. to be paid in Money at the Rates there mentioned; and see Stat. 12 Ann. sess. 2. c. 6. for the Dioceses of *Bangor*, *Landaff*, *St. David's*, and *St. Asaph*.
- 1 Rel. Abr. 641, 642. *Nag*, not; being rid only by the Master of the Husbandry.
- Danv. 585, 614. *Nurseries* of Trees to be sold.
- Danv. 589. *Oaks*, which are or may be Timber, not.
- 11 Co. 16. *Oblations*, *Obventions*, or *Offerings*, are in the Nature of Personal Tithes; and are payable, according to Custom, to the Parson or Vicar; where the Party dwells, occasionally, as at Marriage, Burial, &c. or at a stated Time, as at *Easter*, &c. Vide post, §. 34.
- 2 Inst. 62, 621. *Orchards*, (besides Tithe of the Fruit) pay for the Grass, or if sown with Grain; but not of the Fruit-trees, if they have born and paid that Year.
- Danv. 583. *Parks*, for the Deer, and for the Herbage, by Custom. If converted into Tillage, then pay as other Land.
- 2 Rol. Abr. 647. *Partridges* and *Pheasants*, though tame, and breed; not.
- Pease* for Sale, or to feed Hogs, &c. not, green Pease to eat in the House.
- Pensions*, by Composition before the Ordinary, in Lieu of Tithes; or by Prescription.
- 1 Vent. 5. *Pigeons* if sold; not so of common Right, if spent in the House; but may be by Custom.
- Danv. 583, 593, 597. *Pigs*, as *Calves*.
- 1 Rol. Abr. 637. *Pits* and *Quarries*. See *Bricks*.
- Plants*. See *Nurseries*.
- 1 Lev. 189. *Pollards*, or Trees usually lopped, pay at any Age.
- Plow. 470. *Quarries*. See *Bricks*.
- 2 Inst. 652. *Rakings* involuntary; not fraudulently scattered.
- Danv. 598. *Rate Tithe*, is a Payment by Custom for feeding Cattle.
- Danv. 585, 589. *Roots* of Timber-Trees, not; nor of other Trees, unless by Custom, if the Wood pay Tithe.
- 1 Cro. 467. *Saffron*, a small Tithe.
- 1 Rol. Abr. 642, 647. *Salt*, not; unless by Custom.
- 3 Cro. 237. *Sheep*. See *Lamb* and *Wool*. Not for their Feeding eaten in the House.
- 2 Inst. 651. *Slate*, not; unless by Custom.
- 2 Inst. 652. *Stubble*, not.
- 1 Cro. 139. *Sylva Cædua*. See *Wood*.
- Tares* or *Vetches*; but not, if cut down green, and given to the Beasts of the Plough, there not being other sufficient Pasture.
- Tile*. See *Bricks*.
- Trees*. See *Nurseries*.
- Turf*. See *Bricks*.

Turkies, not; because *fera Naturæ*. Q.

Danv. 583.

Venison. See *Deer*.

Underwood, whether cut down or digged up by the Roots; 2 Inst. 642. except sufficient Fuel for the House.

Warren. See *Conies*.

Waste for the Cattle which feed there. See *Agistment*, *Herbage*, and 2 E. 6. c. 13. §. 3.

Wax. See *Bees*.

Willows, as *Beech*.

2 Inst. 642, 643.
Hob. 219.

Wood.

Danv. 594.

Wood, a great Tithe, payable when cut; except Timber of or above twenty Years Growth, by Stat. 45 E. 3. c. 3. or as some say if under, if it may be Timber. *Hedgebote*, *Ploughbote*, and *Housebote*, are also Tithe-free. And a County, or great Part of a County (as the Wilds of *Kent* and *Sussex*) may prescribe to be discharged of this Tithe. It is set out, standing or felled, as the Custom directs.

Doc. & Stud.

Dial. 2. c. 55.

13 Co. 13.

2 Inst. 642, 643.

644, 652.

1 Vent. 75.

Danv. 597.

2 Inst. 643.

Hob. 250.

Wool, a mixed and small Tithe; it is due of all the Wool, except what is cut off to save the Sheep from Dirt or Vermin.

No *Rate-Tithe* is payable for their Feeding under thirty Days. 1 Rol. Abr. 642,

Upon the whole, observe, that the Manner of Payment of 646, 647, 648,

these and most other Tithes is for the most part governed 649.

by the Custom of every Parish. Barren Land inclosed, with- F. N. B. 51.

in the Meaning of Stat. Ed. 6. to be exempted from Pay- 2 Inst. 652.

ment of Tithes, must be such Land as is barren *suspte natura*, and not Land upon which *Wood*, or the like, grew before, which is afterwards burnt, and the Land converted into Til- lage. By *Powell J. Anon.* 2 Ld. Raym. 991.

34. A Custom was alledged, that every Inhabitant keeping an House, and having a Family in *W.* and having a Child born in that Parish, at the Time of churching the Mother of the Child, or at the usual Time after her Delivery when she should be churched, have Time out of Mind paid ten Pence to the Vicar, &c. is a void Custom; 1. Because uncertain as to the Time when the Women should be churched. 2. Because unreasonable, because it obliged the Husband to pay if the Woman was not churched at all, or if she went out of the Parish, or died before the Time of churching. *Naylor qui tam v. Scott*, 2 Ld. Raym. 1558.

C H A P. XIII.

Other Duties of Incumbents by Statutes.

What Acts of
Parliament
must be read
by Incumbents.

1. **B**Y several Acts of Parliament, an Incumbent is obliged to read the Act of Uniformity of 5 & 6 Ed. 6. c. 1. once a Year; the Act for observing the fifth of *November*, 3 Jac. 1. c. 1. after the Morning Service for that Day; the Act for observing the 29th of *May*, 12 Car. 2. c. 14. the Lord's Day next before; the Act against Swearing of 6 & 7 W. 3. c. 11. on the *Sunday* next after the 24th of *June*, 29th of *September*, 25th of *December*, and 25th of *March*, under Pain of twenty Shillings. Also the whole Book of Canons 1603, is to be read once every Year, upon some *Sunday* or Holiday in the Afternoon before Divine Service, dividing the same in such Sort, that the one Half may be read the one Day, and the other another Day.

Penalty of Per-
sons marrying
People without
Licence.

2. By Stat. 7 & 8 W. 3. c. 35. all Parsons are prohibited to marry People, or suffer them to be married in their Churches or Chapels, exempt or not exempt, or at any other Place whatsoever, without the Publication of the Bands, &c. or without Licence. The Penalty is one hundred Pounds for each Offence, to be recovered by Action of Debt, Bill, Plaint, or Information; one Moiety to the King, the other to the Informer; and the Man thus married forfeits ten Pounds to any Person who will inform, &c. and every Clerk or Sexton, knowingly assisting at such Marriage, forfeits five Pounds to be recovered with Costs, as aforesaid.

Parsons Duty
about Burials.

3. By Statute 30 Car. 2. c. 3. the Minister of every Parish is to keep a Register of the Burials and Affidavits of Persons buried in Woollen. These Affidavits are to be brought to the Minister within eight Days after the Burial; if not, the Minister must enter a Memorandum of the Default and of the Time when he gave Notice thereof to the Parish Officers; which Notice must be given in Writing, under the Hand of the Minister; and this may be done at any Time; but the best Way is soon after the eight Days are expired. The Minister making Default in any of these Particulars, forfeits 5 l. The Affidavit must be taken by a Justice of the Peace, Mayor, or such Officer in the Parish where the Party was buried; and if there is none in that Parish, then by a Minister in the County, excepting in that Parish where the Corpse was buried. He who takes the Affidavit must set his Hand to it, and it must be attested by two Witnesses, who were present at the taking it.

4. In every Parish there should also be a Parish Register, which is a Parchment Book, in which all the Christenings, Marriages and Burials are recorded. This was first ordered by the Vicegerent *Cromwell*, in the 30th Year of K. *Henry VIII.* and since enforced by a Canon made 1603, in the Time of King *James I.* by which it is required, that a Chest should be provided at the Charge of the Parish, with three Locks, and as many Keys, for the Minister and each of the Churchwardens, so that neither of them should take out the Book but when they were all present; that when a Page is full written, the Minister and each of the Churchwardens shall subscribe their Names; and that the Churchwardens shall every Year, in *April*, transmit the Names of all Persons christened, married, and buried, to the Bishop or his Chancellor, and the Days and Month in which it was subscribed by them; and if either of them make Default, he might be cited by the Bishop or his Chancellor, and proceeded against as a Contemner of the Canon. And so great Credit is given to this Register, that a Copy from it, duly attested, is allowed to be good Evidence in the Common-Law Courts, and the Falsifying it is indictable. One was fined 200 *l.* for forging the Entry of a Marriage. 2 *Sid.* 71.

Parish Register to be kept.

5. I cannot leave this Head, without cautioning Ministers, as well as Churchwardens, not to suffer any to be entred and recorded in the said Parish Register, but such only as have been baptized, married, or buried within their respective Parishes, according to the Order of the Church of *England*. For a Practice hath of late been admitted in some Places, to receive Certificates from Dissenting Ministers, of Baptisms administered by them, and thereon enter them in the Parish Register; and this is done for the Lucre of a twelve-penny Fee to the Minister for that Purpose. But whoever is guilty of this vile Practice, betrays both the Church and his Trust, and by making himself a Forger of false Records, exposes himself to Penalties which would disgrace, if not ruin him, all his Life after, were they duly executed upon him.

6. A Man is to be ordained Deacon at twenty-three Years of Age, and afterwards a Priest at twenty-four. Not that it was ever accounted of absolute Necessity, there should be the Interval of a Year between the conferring these Orders; for by Canon 32, if a Bishop shall find Cause to the contrary, a Deacon may be admitted into Holy Orders within that Time, but regularly it ought to be a Year: And with great Reason; because in that Time it may appear whether the Person is fit to have the Cure of Souls intirely committed to his Charge. But by the same Canon 'tis expressly provided, that a Bishop shall not make the same Person both a Deacon and a Priest in one Day.

Ages for entering into Holy Orders.

Donatives.

* 1 Inst. 344. a.
Yelverton 61.

7. Having mentioned a Donative, it may be proper here to describe it. It is a Church exempted from the Power of the Ordinary, except in certain Cases of Oaths, Subscriptions, &c. enjoined by Statute. The Incumbent is put into Possession by the Gift in Writing of the Patron, without Presentation, Institution, or Induction; there can be no Lapse of it *, except it be specially provided for in the Foundation; but the Bishop may compel the Patron by Ecclesiastical Censures to nominate a Clerk. The Patron generally is to visit, and not the Bishop, except (by 1 Geo. 1. c. 16) where the Donative is augmented by Queen Anne's Bounty. If the true Patron of a Donative once present, and his Clerk is admitted and instituted, it becomes a Church presentative for ever. But it was held by *Holt*, Ch. J. and *Powell*, J. that though a Presentation may destroy an Impropriation, yet it could not destroy a Donative, the Creation being by Letters Patent, whereby Lands were settled to the Parson and his Successors, and he to come in by Donation. *Ladd v. Widows*, 2 Salk. 541. But note; the Parson of a Donative is liable to the Ecclesiastical Jurisdiction, as he is a Member of the Ecclesiastical Body, for personal Offences; though for Matters relating to the Church he is exempt, and therefore the Spiritual Court cannot deprive him; but they may censure him for Drunkenness, preaching Heresy, marrying without License, &c. *Colefart v. Newcomb*, 2 Ld. Raym. 1205, 1206.

Deacons.

8. As in the primitive Times a Deacon was to read the Gospels, so with us, his Office consists in reading Divine Service, Catechising Children, and Baptising Infants, Burying, Marrying; and before the Act of Uniformity he might be Incumbent on a Living with Cure, but not since; and the very Form of ordaining Deacons expressly mentions that 'tis his Office to assist the Priest in the Distribution of the Holy Communion. But I think the bare Act of giving the Cup to them without consecrating the Wine, doth not make him an Offender within the Statute of 13 & 14 Car. 2. c. 4. Because the Prohibition is, that no Person shall presume to consecrate and administer the Sacrament, &c. Which Words comprehend the whole Solemnity of the Communion.

Parochial Libraries.

If a Book be
taken away,
Ordinary may
bring Action.

9. I shall conclude this Chapter with mentioning a Word or two concerning Parochial Libraries. By a Statute made 7 Ann. c. 14. it is provided, that where there is a Parochial Library, every Incumbent, before he shall be permitted to use such Library, must enter into a Bond to be approved by the proper Ordinary, conditioned for the Preservation of the Library, and to observe the Rules and Orders belonging to the same. And if a Book shall be taken away or detained, the Incumbent or any other Person may bring an Action of Trover in the Name of the proper Ordinary, and shall re-

cover

cover treble Damages with full Costs; which Damages shall be applied to the Use of the Library.

10. The said Ordinary, his Commissary, or his Official, or the Archdeacon, or his Official, or Surrogate, (if the said Archdeacon is not incumbent of the Place where the Library is) may inquire in their Visitations of the State of such Library, and the Ordinary may appoint any Person to view it. May inquire in his Visitation,

11. And where a Library is appropriated to the Use of the Incumbent, he must, within six Months after his Induction, make a new Catalogue of all Books in the Library, and must sign the same, acknowledging the Possession of such Books; which Catalogue he must deliver to the proper Ordinary within the Time aforesaid. Incumbent must make a Catalogue within six Months.

12. And upon any Vacancy, the Library must be locked up by the Churchwardens, or by a Person appointed by the proper Ordinary, or by the Archdeacon, unless the Place where such Library is kept shall be used for the Vestry, or otherwise for Dispatch of Business, and after that is done, the Place is to be locked up. On any Vacancy, Library must be locked up.

13. And likewise a Book shall be kept in the Library for the entering of all Benefactions, which the Incumbent is to see fairly entered, and the Ordinary is to make proper Rules and Orders, but not contrary to the Order of the Donor, which shall be entered in the said Book. A Book for Benefactions.

14. None of the Books shall be alienable without the Consent of the Ordinary, and then only where there is a Duplicate of such Book; and if any Book is taken away or lost, a Justice of the Peace may grant his Warrant to search for the same; and if it is found, the Justice shall immediately order it to be restored to the said Library. Books not alienable without Consent of Ordinary, &c.

15. But the Library at Ryegate in Surrey, being constituted in another Manner, is not included in the Act. Library at Ryegate excepted.

C H A P. XIV.

Of the Clerk of a Parish.

1. **P**ARISH Clerks were originally real Clerks, of whom every Minister had at least one to assist under him in the Celebration of Divine Offices, and therefore were usually chosen by him. They were therefore afterwards called Clerks, tho' not in Holy Orders. The Business at first was to officiate at the Altar, and say Masses for the Dead, and they had a

What Parish Clerks were originally.

competent Maintenance for this Service by the Offerings made at those Altars where they officiated; for in the Times of Poverty there were several Altars in one Church.

How chosen.

Custom for Parishioners to choose him, is good.

They who put him in can put him out.

His Qualifications.

His Duty.

He is not a Person Corporate.

2. Since the Reformation there is but one Clerk in a Parish, who by the 91st Canon is to be chosen by the Minister, who is to signify his Choice to the Parishioners, the next Sunday following, in the Time of Divine Service. But where there is a Custom for the Parishioners to choose their Clerk, 'tis good, and the Canon cannot abrogate such Custom; and in such Case he may have a *Mandamus* to the Archdeacon to swear him. *Comber.* 105, 144. And if a Suit should be in the Spiritual Court to remove him, and to put in another chosen by the Parson, a Prohibition shall go. *Cro. Car.* 589. *2 Roll. Rep.* 73, 481, 670. *Cr.* 670. *2 Rol. Abr.* 424, 286. And if a Parson of a Parish put a Clerk so chosen out of his Place, without Cause, or interrupt him, an Action lies as for any other Man who is interrupted in any Lay Office. *March Rep.* 701, 174. 'Tis said that they only who put him in can displace him, *1 Keb.* 286. but the Ordinary may censure and excommunicate him for Misdemeanors. After he is chosen and declared by the Minister, he is usually licensed by the Ordinary, and may sue for his Dues in the Ecclesiastical Court.

3. The Person thus chosen must be twenty Years of Age, and who can write and read, and he should have a competent Skill in Singing; though such Clerks may receive the usual Wages, and have Remedy for the same in the Spiritual Court, yet if they sue for a certain Quantity of Bread due to them by Custom from every Parishioner at *Christmas*, a Prohibition will be granted. *2 Rol. Abridgment* 286. A *Mandamus* may be granted to restore him to his Place if he be removed. *2 Lev.* 18.

4. His Duty is to assist the Minister, and make Responses in reading Prayers, Baptizing, Marrying, Burying, and the other Divine Offices, setting the Psalms, &c. though his Office be but a Lay Office.

5. He is not a Person Corporate, nor hath Succession, and the Parson is not tied to find the Parish Clerk, as it was adjudged in *Saul* and *Wood's* Case, *Hill.* 30 *El. B. R.* *1 Leon.* 94. But if the Parson be by Custom tied to find such a Clerk, a Prescription to pay 5 *s. per Ann.* or such Sum to such a Parish Clerk by a Parishioner in Discharge of his Tithes, is a good Discharge of the Tithes against the Parson; but yet Tithes are not payable to him as Tithes, for that he is but a Lay Person. *Year-Book* 3 *Ed.* *Annuity* 40. But to pay a Rate to the Parish Clerk, is no good Discharge of Tithes against the Parson or Vicar, unless the Parson be bound by Custom to find a Parish Clerk. [Nor is a *Modus* to a Parson a good Discharge against the Vicar. *Yelv.* 86. *Contra*

3 *Bulst.*

3 *Bulst.* 220. 1 *Leon.* 94. *Cro. El.* 71. 1 *Bulst.* 220. *Wintel ver. Child*, *Mich.* 14 *Jac.* 1. *B. R.*]

6. Tho', as has been said, a Parish Clerk be not of himself a Person Corporate, nor hath Succession, yet, by a Charter dated so long ago as 17 *Hen.* 3. the Parish Clerks in and about the City of *London* were incorporated, and pursuant thereunto have several By-Laws and Ordinances among them. And pursuant hereunto, in the Acts for building and settling the fifty new Churches, there is a Clause to provide, that the Parish Clerk of the new Parish shall be a Member of the Corporation or Company of Master, Wardens, Assistants and Brethren of the Parish Clerks of the Parish Churches of the City and Suburbs of *London*, and the Liberties thereof, the City of *Westminster*, and Borough of *Southwark*, and the fifteen Out-Parishes in the Letters Patents of the said Corporation named, who make weekly and yearly Accounts, commonly called the Bills of Mortality, of the Christenings and Burials happening in their several Parishes, and for their being subject to the Rules and Orders of the said Company; as any other Parish Clerk is or ought to be.

Clause in the Acts for building fifty new Churches.

7. Bishop *Kennet* tells us, that the Parish Clerk formerly was to take an Oath of Fidelity to the Parish Priest, and was sometimes maintained by the Appropriators as a menial Servant to the Vicar, and that they were formerly to be Men of Letters, and to teach a School in the Parish, and were sometimes elected by the Parishioners, upon whose Alms and Oblations they were supposed to live. And that by the Constitutions of *Alexander* Bishop of *Coventry* 1237, and by the Synod of *Cologne* 1280, Parish Clerks were to be Schoolmasters in Country Villages, and adds, that it would be good Service to this Church and Nation, to restore the ancient Practice, especially in remote Country Villages; to which I may add the Charity Schools, where the Clerk would do much to the Service of God, and the Benefit of the People, if he were employed to instruct the Children in Reading and Writing, and rehearsing the Church Catechism, that they might be bred to a Sense of Christianity and good Manners.

Advice about them.

C H A P. XV.

Of the Organist.

1. **A**MONG those employed in and about the Church, we may justly reckon the Organist, who hath the Care and Management of the Organ.

Of Church
Music.

2. I shall not here enter into the Disquisition, how far it may not only be lawful, but even expedient to make Use of both Vocal and Instrumental Music in Churches. It is certain it was very much used under the *Jewish* Dispensation; and *David*, who is recorded to be a Man after God's own Heart, took great Delight, and was very skilful in it; and the Songs or Psalms which were composed either by himself or his Masters of Music by his Appointment, to the Praise and Glory of the Almighty, are used even to this Day among us. The Book of the Psalms is owned by all to be Canonical Scripture, and as such to be inspired by the Holy Ghost; and though some of them especially are some of the sublimest and most elevated Pieces of Poetry, that perhaps were ever wrote, yet some of our modern Saints cannot be brought to sing them, much less to use Instrumental Music in their Assemblies: And this is the more to be wondered at, because in Scripture 'tis expressly said, praise him with the Organs, &c. and in all the Reformed Churches abroad, and even in *Holland*, where Money is loved as much as any where, and Expence as much avoided, there are few Churches without an Organ, which is also used and practised in the Church of *England*, and a Stipend or Salary paid to the Organist.

The Psalms.

How Organist
chosen.

3. This is an Officer chose by the Parish, and paid out of the Parish Money by the Churchwardens, and allowed in their Accounts; and if they do not duly pay him his Salary when due, they are liable to be sued for the same.

4. And if the Organist be unduly removed, *Quere* if a *Mandamus* will not lie to restore him; and as he is a Master of Music, so does he often teach some of the younger Parishioners Music.

5. If the Organs be taken out of the Church, the Churchwardens may bring an Action of Trespass, though the Vicar took them, because they belong to the Parishioners, and not to the Parson.

CHAP. XVI.

Of the Sexton.

1. **T**HIS is an inferior Officer attending on the Church, chose likewise by the Parish. His Business is to keep the Church clean swept and adorned, to open the Pews, to make and fill up the Graves for the Dead, and by the Churchwardens Direction, to provide Candles and Necessaries belonging to the Church, to get the Linen washed, &c. to attend during Divine Service, to keep out excommunicated Persons, Dogs, &c. and to prevent any Disturbance in the Church.

Sexton how chosen, and his Duty.

2. His Fees are generally settled by Order of the Vestry, and a Table of them is hung up there or in the Church. His Salary is paid by the Churchwardens. And if he be unduly removed, a *Mandamus* will lie to restore him. 2 *Leo*. 18.

A *Mandamus* will lie to restore him.

3. A Person was indicted of Felony, for digging up the Graves of Persons buried, and taking away their Shrowds, Coffins, &c. afterwards interring their Bodies again; and it was resolved in this Case, that the Property of the Shrowds, Coffins, &c. remained in the Person who was the Owner when used, and the Offender was found guilty of Felony, but had his Clergy. *Hains's Case*, Sexton of the Parish of *White-Chapel*, *Co. Lit.* 113.

One indicted for Felony.

4. Thus having treated of those Officers, whose Attendance is more immediately required in and about the Church, we shall proceed to those who are chose by the Parish in Vestry assembled; but first we shall mention a few Things concerning Vestries themselves.

CHAP. XVII.

Of Vestries.

1. **A** Vestry, properly speaking, is the Assembly of the whole Parish met together in some convenient Place, is for the Dispatch of the Affairs and Business of the Parish; and this Meeting being commonly held in the Vestry adjoining to, or belonging to the Church, it thence takes its Name of Vestry.

What a Vestry is.

Method of calling a Vestry.

stry, as the Place itself does from the Priest's Vestments, which are usually deposited and kept there.

2. The *Sunday* before a Vestry is to meet, public Notice ought to be given, either in the Church, after Divine Service is ended, or else at the Church Door as the Parishioners come out, both of the calling of the said Meeting, and also of the Time and Place of the Assembling of it; and it will be fairest then also to declare for what Business the said Meeting is to be held, that no one may be surprized, but that all may have full Time before to consider of what is to be proposed at the said Meeting; and 'tis usual that for Half an Hour before it begins, one of the Church Bells be tolled to give the Parishioners Notice of their assembling together, and when they are met, the major Part present conclude those who are absent: And to make this Consent more authentick, it will be convenient that every such Parish Act be entered in the Parish Book of Accounts, and that every Man's Hand consenting to it be set thereto; for then it will be a fixed and an apparent Rule for the Churchwardens to act by, and also by which the Parishioners may judge when they take their Accounts, whether what they have done be according to their Commission or no. *St. Saviour's Parish's Case*, 5 *Mod.* 66, 67. *Lane* 21. *Hetley* 61. *Littleton* 263. *Popham* 137. 1 *Mod. Rep.* 194, 236. 2 *Mod.* 222. 2 *Vent.* 167.

If any one shut one out of the Vestry who has a Right to come in, an Action on the Case lies for it.

3. *Pasch.* 11 *Geo.* 1. There was a special Action on the Case, brought by a Parishioner against the Defendant, for shutting him out of the Vestry, he having offered to come in and vote among the Parishioners. In which Action the Plaintiff declared that there was a general Summons for the Parishioners, &c. to meet at a Vestry in such a Room near the Church; and that every Parishioner who paid Scot and Lot, had a Right to be present, and vote at the Vestry; that the Plaintiff was a Parishioner, &c. and paid Scot and Lot, and was coming to the said Vestry, but was shut out by the Defendant, so that he could not be present and give his Vote at the Meeting of the Parishioners, consulting for the Good of the Parish, *ad damnum*, &c. The Defendant demurred specially to this Declaration, for that the Plaintiff did not shew any special Damage by his being shut out, and the Plaintiff joined in Demurrer. Upon arguing of which, it was held by the Court, that the Plaintiff could not maintain his Action, because he had not set forth any Right which he had to come into the Room; but if he had set forth such Right, the Action would have lain, because if he had a Right, he must have a Remedy to assert it; and he hath no Remedy but this Action: For there is no Breach of the Peace, or Injury to the Publick, therefore no Indictment or Information can be good in this Case. By the Common Law, a Parishioner may have a Right to

to be at the Vestry, and probably if he be disturbed in the quiet Enjoyment of that Right, he may maintain an Action against the Disturber; but then he must set forth a Right to enter the Room where the Vestry was kept: For otherwise it may be the Room of the Defendant, where he hath no Right to come. Therefore it was agreed, that if the Right to enter this Room had been well set forth, the Action would have been well brought, for every Parishioner has a private Right to be present at the Vestry and vote; and therefore any one of them may have an Action against another for hindering him to be present. But because the Plaintiff had not set forth a Right in himself, to enter into the Room, therefore upon that Point Judgment was given against him by the Court *Una Voce*, and not upon the Merits of the Case. *Intr. Pas. 8 Geo. 1. Rot. 243. Phylibrown ver. Ryland.*

4. Antiently, and at Common Law, every Parishioner who paid to the Church Rates, or Scot and Lot, and no other Person had a Right to come to these Meetings, and when they who are thus qualified, are thus assembled at the Time and Place appointed, the present include all the absent, and the major Part of the present include all the rest. And in the Country this Custom still prevails in most Places. But in larger and more populous Parishes, especially in and about London and Westminster, whether from the Attention of most People to their private Affairs, or from the tumultuous Proceedings which generally happen in such populous Assemblies, a Custom has obtained of yearly choosing a select Number of the chiefest and most reputable Men to represent all the rest, and to manage the Concerns of the Parish for that Year, which by Degrees is become a fixed Method; and in these Parishes the Parishioners have lost not only their Right to concur in the publick Management as often as they should attend, but also (in most Places, if not all) the Right of electing the Managers, who are called a select Vestry. In the Election of these select Vestrymen, those who do not pay to the Church Rates have no Votes, except the Parson or Vicar. But in some Parishes these select Vestries having been thought oppressive and injurious, great Struggles have been made to set aside, and demolish them.

5. *Mich. 2 W. & M. B. R.* in a Prohibition prayed to the Spiritual Court at York, the Suggestion set forth, that the Parish of *Masbam* in *Yorkshire* was an antient Parish, and that Time out of Mind there were twenty-four of the chief Parishioners, who all along had been called the Four and twenty; and that during Time immemorial, as often as any one of the said four and twenty Parishioners happened to die, the rest surviving of the four and twenty did choose, and during all the said Time used to choose, one other fit and able Parishioner of

Who have a Right to vote in Vestry, and who not.

Of select Vestries.

Case of select Vestry.

of the same Parish, to be one of the Twenty-four, in the Room of him so deceased; and that within the said Parish there is, and during Time immemorial, there always has been a Custom, that the said Twenty-four for the Time being, have been used and accustomed, as often as there was Occasion, to make Rates, and to assess reasonable Sums of Money, upon the Parishioners and Inhabitants in the said Parish for the Time being, for the Repairs of the Church, &c. And that the Churchwardens of the said Parish, during all the Time aforesaid, have used to receive all Duties and Dues for Burials in the Body or Isles of the said Church; and if any of the Inhabitants refused to pay the said Rates or Dues for Burials, &c. then the Churchwardens, by Warrant from the Twenty-four for the Time being, were used to distrain the Goods and Chattels of the said Parishioners in the said Parish; and that the said Twenty-four, with the Consent of the Vicar or Curate, &c. have used to repair the Body and Isles of the said Church; and that the Churchwardens for the Time being, during all the Time aforesaid, have always used to give up their Accounts to the said Twenty-four, who allowed or disallowed the said Account, as they saw expedient; and that on the Allowance of such Account, the Churchwardens have always been discharged from giving any other Account in any other Place, &c. that the Plaintiffs were Churchwardens, &c. for the Year One thousand six hundred eighty; and after their Year was ended, they gave in their Accounts to the Twenty-four. And that though all Pleas concerning Prescriptions and Customs, ought to be determined by the Common Law; yet the Defendant hath drawn and cited them into the Spiritual Court, &c. to give in, and pass their said Accounts there; and although the said Plaintiffs have pleaded all the Matters aforesaid in the said Spiritual Court, yet the said Defendant hath refused to admit, or to receive their said Plea, &c. Upon great Debate of this Case at several Times, the Court was of Opinion, that the Custom aforesaid was good and reasonable, and a Prohibition was absolutely granted. *Batt and others, the late Churchwardens of the Parish of Massam v. Watkinson, 2 Lutw. 1027.*

Constant immemorial Usage the only Support of select Vestries, &c. See the following Sections.

6. So that Prescription and constant immemorial Usage seems to be the Basis and only Support of these Vestries; and pursuant hereunto, upon the same Foundation, and for the same Reasons was the select Vestry of the Parish of *St. Mary At-Hill in London*, confirmed and established in *B. R.* but a few Years ago. And since then, the select Vestries of *St. Saviour's* and *St. Olave in Southwark*, for want of Proof of such Prescription and immemorial Usage, have been both set aside.

7. There are in several Parishes several differing Customs, both as to the Electing, Government and Management of these select Vestries, which was the Reason that in the Stat. made 10 Ann. c. 11. for the building the fifty new Churches in or near London or Westminster, there is a Clause whereby five or more of the Commissioners, with the Consent of the Ordinary, are empowered by a Writing under their Hands and Seals, to be inrolled in Chancery, to name a sufficient Number of the Inhabitants of each new Parish to be Vestrymen thereof, and upon the Death or Removal, &c. of any Vestrymen, the rest, or the Majority, may choose another, being an Inhabitant and Householder in the Parish.

Clause in the Act for building fifty new Churches.

8. And by the Statute 2 G. 2. c. 10. made for the raising a Maintenance for the Rector of the new Church erected in the Hamlet of *Spittle-fields*, it is enacted, That the Rector of that new Church, and the Churchwardens and Overseers of the Poor of that new Parish for the Time being, and all other Persons who have served or paid Fines for being excused for serving the Office of Churchwarden or Overseer of the Poor for the Hamlet of *Spittle-fields*; or who hereafter shall serve, or by the Vestry be admitted to pay Fines for being excused from serving the Office of Churchwarden, or Overseers for the Poor of the new Parish, so long as they shall continue Householders within the said Parish, and paying to the Poor's Rate, shall be the Vestrymen for the Time being of the said new Parish, and shall meet from Time to Time on publick Notice, to be openly read and published in the Church, by Order of the Rector, Churchwardens or Overseers of the Poor, or either of them, on the Lord's Day next preceeding, immediately after Divine Service; and the said Vestrymen, or the major Part of such of them as shall be assembled at such Meetings, shall elect and nominate a Lecturer, or Lecturers, as also Churchwardens, Sidefmen, Parish Clerk, and all other Officers for the Parish, who were usually by and for the said Hamlet, and also elect, amove, and put out the Sexton, Gravediggers, and all other Officers and Servants to be employed about opening the Pews, making the Graves, or otherwise in or about the said Church; and shall have, and may exercise all other the same Powers and Authorities as they might or could have done, if they had been named to be Vestrymen of the said new Parish by the Commissioners, with the Consent of the Ordinary, by Instrument under their Hands and Seals inrolled in the Court of Chancery, according to the said Act, 10 Ann. c. 11. which Lecturers so to be chosen, shall be admitted by the Rector to have the Use of the Pulpit.

Of whom the Vestry is to be composed in *Spittle-fields* Parish.

9. And by the Statute made 2 G. 2. c. 30. for raising a Maintenance for the Rector of the new Church erected in the Hamlet of *Wapping Stepney*, it is enacted, That the Rector,

Churchwardens,

Of whom in the Parish of *Wapping Stepney*.

Churchwardens, and Overseers of the Poor for the Time being, and all other Persons who shall pay two Shillings a Month or more, towards the Relief of the Poor, and no others, shall be Vestrymen of that new Parish, and shall meet, &c. and have the same Powers, &c. as in the last preceding Clause.

Of whom in
Limehouse Pa-
rish.

10. And by the Statute made 3 G. 2. c. 17. for raising a Maintenance for the Rector of the new Church in the Hamlet of *Limehouse*, it is enacted, That the Rector, Churchwardens, and Overseers of the Poor, and all other Persons who shall pay twelve Pence each Book towards the Relief of the Poor of that new Parish, and none others, shall be Vestrymen of the said Parish, and shall meet, &c. and have the same Powers, &c. as in the preceding Clause for the new Church in *Spittle-fields*. And in the same Act there is another Clause, which says, that the Inhabitants of that Part of the Hamlet of *Ratcliffe*, which is thereby intended to be Part of that Parish, who shall pay two Shillings and six Pence a Month towards the Poor's Rate's of *Ratcliffe*, shall be Part of the Vestrymen of that new Parish, and may act as such in all Matters relating to the Church and Parish, as the other Vestrymen of that new Parish may do; but they shall not intermeddle in any Affairs that concern the Hamlet of *Limehouse*, in those Respects wherein that Hamlet, and the said Part of the Hamlet of *Ratcliffe*, are to continue distinct from each other.

And in the
Hamlet of Rat-
cliffe.

Of whom it is
composed in
the Parish of
St. Nicholas,
Deptford.

11. By a Statute made 3 G. 2. c. 33. for the Maintenance of the Minister of the new Parish Church of St. *Nicholas, Deptford*, it is enacted, That the Minister, Churchwardens, Overseers of the Poor, and all other Parishioners, who shall pay to the Relief of the Poor, and none others shall be Vestrymen of that new Parish, and shall meet, &c. and have the same Power, &c. as in the preceding Clause in the Statute 2 G. 2. c. 10. relating to the new Church in *Spittle-fields*.

And Horsley-
down.

12. And by the Statute of 6 G. 2. c. 11. for providing a Maintenance for the new Church of *Horsleydown*, &c. it is enacted, That the Rector of that new Church, and all other Parishioners renting, &c. Houses, &c. of ten Pounds yearly Value, as assessed to the Land-Tax within the Parish, shall be Vestrymen, and no others; and shall meet and choose Churchwardens, &c. as above in the Clause for the new Church in *Spittle-fields*. And by this Act they are impowered to raise a Sum not exceeding 500 *l.* to be appropriated for buying Necessaries for decent Order for administering the Sacrament, and other Uses of the Church and Steeple. *Vide* the Act.

And new
Church near
Old street.

13. And by the Stat. 6 G. 2. c. 21. for providing a Maintenance for the Rector of the new Church near *Old-street*, in the Parish of St. *Giles, Cripplegate, &c.* it is enacted, That the

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Chap. 18.

Parish Law.

63

the Rector, Churchwardens, and Overseers, of the Poor of this new Parish, and other Persons who have served all Offices for the said new Parish, or paid Fines for being excused, or who shall hereafter serve, or by the Vestry be admitted to pay Fines for being excused, shall be Vestrymen of the said new Parish, so long as they respectively continue Household-ers in the same, and paying to the Poor's Rate, and shall meet, &c. and have the same Powers as above in the Clause for the new Church in *Spittle-fields*. And may make Rates for buying Necessaries for the Sacrament, and other Uses of the Church and Steeple. *Vide the Act.*

14. By Statute 6 *Ann. c. 31.* every Parish within the Bills of Mortality, shall at all Times have and keep in Repair in some publick Place in each Parish, a large Engine, and Hand-Engine, for extinguishing Fires, and one leathern Pipe and Socket of the same Size as the Plug or Fire-cock, to the Intent the Socket may be put into the Pipe to convey the Water clean into the Engine.

Vestries, &c.
must provide
one or more
Engines a-
gainst Fire, &c.

15. And by the Statute 7 *Ann. c. 17.* the Churchwardens and Overseers of the Poor and Inhabitants, &c. in a Vestry assembled, shall and may rate and assess such competent Sums of Money as shall be necessary to defray the Charges of providing and maintaining the Engines, Stop-blocks and Fire-cocks, and other Implements and Materials; which Rates being confirmed as the Poor's Rates are, may be levied in the same Manner. And if the Vestries within the Weekly Bills of Mortality shall think it necessary to have more than one great Engine, or Hand-Engine, they may provide them at the Parish Charge, by an Assessment to be made, and under the same Regulation as in the preceding Clause are mentioned. And Vestries of Parishes are to be consulted by Churchwardens and Overseers of the Poor, and give their Consent to the Hiring of Houses, for the better employing and maintaining the Poor, by Stat. 3 *G. 1. c. 7.*

And may assess
Rates for the
same.

Vestries must
be consulted
by Parish Offi-
cers in pro-
viding Work-
houses for the
Poor.

C H A P. XVIII.

Of the Vestry Clerk.

THE Clerk of the Vestry is chosen by the Vestry, and he acts as Register or Secretary thereto and therein, but has no vote as Clerk; and his Business is to attend at all Parish Meetings, and to draw up and copy all Orders and other

The Office and
Duty of Clerk
of the Vestry,
&c.

other Acts of Vestry, and give out Copies thereof when necessary; and therefore has the Custody of all Books and Papers relating thereto.

C H A P. XIX.

Of the Beadle of a Parish.

Derivation of
the Word By-
del or Beadle.

1. **B**EADLE (*Sax.* Byðel) from *Biddan, Orare*, in the general Sense of the Word signifies a Cryer or Messenger of a Court. *Manwood, part 1. fol. 201.* says a Beadle is an Officer or Servant of the Forest, who makes all Manner of Garnishments of the Courts of the Forest, and all Proclamations, as well within the Courts as without, and executes all the Processes of the Forest, &c.

His Office and
Duty, &c.

2. A Beadle of a Parish is one who is chosen by the Vestry; his Business is to attend it, and to give Notice to the Parishioners when and where it is to meet, to execute its Orders, to assist the Constables in taking up Beggars, passing Vagrants, &c. and to that End, where they are to be passed to a great Distance, he is sometimes inserted among the Overseers of the Poor, &c. and generally to do and execute all the Orders and Business of the Vestry and of the Parish, as their Messenger or Servant, &c.

We shall proceed next to treat of Churchwardens, to which may be added Synodsmen or Sidesmen.

C H A P. XX.

Of Churchwardens and Synodsmen, or Sidesmen.

1. **T**HE antient Episcopal Synods (which were held once a Year, about *Easter*) were composed of the Bishop as President, the Dean of the Cathedral as Representative of that Collegiate Body, the Archdeacons, as at first only Deputies or Proctors of that inferior Order of Deacons, and the Urban or Rural Deans, who represented all the Parochial Priests within their Division.

2. The

2. The Urban and Rural Deans were at first so called from informing and attesting the Disorders of Clergy and People in the Episcopal Synod. But when they sunk in their Authority, the synodical Witnesses were a Sort of impanelled Jury, a Priest, and two or three Laymen for every Parish, who were upon Oath to present all Hereticks and other irregular Persons. And by a Provincial Constitution at Oxford, under Edmund Archbishop of Canterbury, Anno 1236, it was ordered, that there should be in every Urban and Rural Deanery two or three Men, having GOD before their Eyes, who, at the Command of the Archbishop, or his Official, should inform of the publick Excesses of Prelates and other Clerks. But afterwards their Number was contracted into two for every Diocese, chosen annually, who were to have no Jurisdiction, but to inquire into all Matters that wanted Correction and Reformation, and faithfully report them to the next Provincial Council or Episcopal Synod, where Inquiry was made according to certain Articles drawn out of the Canons, which were generally the same; according to which, the *Juratores Synodi* or *Testes Synodales* were to give their Answers, upon a solemn Oath which was therefore called *Juramentum Synodale*, as is now by Churchwardens to make their Presentments. So that when the Urban and Rural Deans lost this Synodical Honour, that Part of their Duty which related to the Information of Scandals and Offences, was conferred upon the Churchwardens of every Parish, who became the Grand Inquest upon every Visitation, and were upon Oath to present all Offenders or Violators of the Church. *Kennet's Parochial Antiquities*, p. 649.

3. From hence sprung the Office of Churchwardens, or at least of Synodsmen or Sidesmen, as to that Part of their Office which relates to Presentments; for to other Purposes, *viz.* To take Care of the Goods, Repairs and Ornaments of the Church, the Churchwardens at the Common Law for many hundred Years have been a Corporation; but it is probable they did not begin to make Presentments till a little before the Reformation: for I do not find this Part of their Office enforced by any express Canon, till the Year 1571. Churchwardens then being (as has been said) a Lay-Corporation, to take Care of the Goods of the Church to which they have a Right for the Benefit of the Parishioners, I shall treat of them under these following Heads. 1. By whom Churchwardens are to be chosen. 2. Of Presentments made by them. 3. What Actions they may bring, and for what. 4. When and to whom they are to account. 5. Of Actions brought against them. 6. Of their Power in and about the Church. 7. Of Rates, &c. 8. Of Sequestrations, &c. 9. Of their Duty by several Statutes.

The Origin of
Sidesmen and
Churchwardens.

How Church-wardens are chosen:

4. They are annually chosen by the joint Consent of the Minister and the Parishioners in *Easter Week*, and sworn the first Week after, or some following Week, according to the Direction of the Ordinary; but if the Minister and Parishioners cannot agree in their Choice, then by the 89th Canon the Minister shall chuse one, and the Parishioners the other. But this Right in some Places hath been lost by Disuse, and it hath been said, that of common Right, every Parish ought to choose their own Churchwardens; which Right prevails still in *London*, and is not to be overthrown but by a contrary Custom. Therefore such Incumbents, as are intitled by Custom as well as Canon to nominate one, are concerned for themselves and their Successors to see that Right kept up. *Hardres* 379. 5 *Mod. Rep.* 324. For where an antient Custom of Chusing is in any Parish contrary to this Canon, such Custom is still to be observed, of which we have many Precedents, Prohibitions having been granted; as in *Warner's Case*. *Pasch.* 17 *Jac.* 1. B. R. *Evelin's Case*, 15 *Car.* 1. B. R. &c.

Some Parishes choose both Churchwardens by Custom, &c.

5. Before the making this Canon, the Parishioners in some Places chose both the Churchwardens, and where that was used, the Canon doth not abrogate the Custom: And in such Case, if the Archdeacon, or other Ecclesiastical Officer, should refuse to swear them, a *Mandamus* lies. So it was in the Case of the *King* versus *Martin Rice*, the Archdeacon returned, *that he was a poor Dairy-man, and a Servant, and unable and unfit to execute the Office, &c.* This Return was held insufficient; the Archdeacon hath nothing to do but admit. Churchwardens are Temporal Officers, and a Corporation by Law. *Comb.* 417. 1 *Ld. Raym.* 138. But though every Parish might formerly have a Right to choose their Churchwardens, yet they vary in the Manner of their choosing; therefore a Custom may be alledged, and Issue may be taken at Law to try whether a select Vestry or the whole Parish ought to choose. *Jones* 439. *Cro. Car.* 551, 552, 589. 2 *Roll. Abr.* 234, 287. *Hardres* 379. 2 *Cro.* 532. *Noy* 31, 139. And to such a *Mandamus* the Archdeacon ought not to return, *Quod non sibi constat*, that there is such a Custom, for his Return should be positive, upon which an Action might be grounded to try the Custom, which was allow'd by the Court to prevail against the Canon. 1 *Vent.* 267. And if he should return a Custom for the Parson to choose one, and it should happen to be false, both the Churchwardens may join in Action on the Case against him for such a false Return, in which Damages shall be recovered by both. 3 *Lev.* 362. In 2 *Lut. f.* 1012. there is a Precedent of such an Action of the Case brought by a Churchwarden against a Chancellor of the Diocese of *Chester*, upon refusing to swear him

If Archdeacon refuse to swear them a *Mandamus* lies.

him, and returning to a *Mandamus* that he was not chosen Churchwarden of the Parish of *St. Peter in Chester*. In *Carpenter's Case*, the *Mandamus* was directed to the Commissary to swear two Churchwardens, who were chosen by the Parishioners by Virtue of a Custom which the Rector denied and insisted upon his Right to choose one. The Commissary made a Special Return, which is set forth at large in the Report, but a Prohibition was granted, for the Ecclesiastical Court cannot try the Custom. *Raym.* 439. To a *Mandamus* to swear a Churchwarden, the Archdeacon returned *Non fuit electus*; in *B. R.* this Return was held to be ill, and a Peremptory *Mandamus* was granted. But the Reporter bids us Note, it was certainly wrong: for, the Return is a good Return, and has often been made to such *Mandamus*, and Actions brought upon the Return, and tried. *The King v. White*, 2 *Ld. Raym.* 1379, 1380. and according to this Opinion of *Ld. Raymond*, it was ruled by him and *Reynolds* Justice, in the Case of *The King v. Harwood*, 2 *Ld. Raymond* 1405.

6. The Parishioners are the proper Judges of the Ability of Persons to serve as Churchwardens, because they have a Trust reposed in them by the Parish as Temporal Officers, 5 *Mod. Rep.* 325. 1 *Vent.* 266. for if the Churchwardens fail with Money belonging to the Parish in their Hands, the Parishioners are the Losers.

The Oath of a Churchwarden.

7. **Y**OU do swear truly and faithfully to execute the Office of a Churchwarden within your Parish, and according to the best of your Skill and Knowledge, present such Things and Persons as to your Knowledge are presentable by the Laws Ecclesiastical of this Realm.

So help you God, and the Contents of this Book.

8. If any Person elected to be Churchwarden, shall refuse to take the Oath according to Law, he may be excommunicated for such Refusal.

9. The Office of Churchwardens is reputed to continue till the new Churchwardens that succeed are sworn.

10. All Peers, Clergymen, Parliament-Men, Servants to the King in Ordinary, Lawyers and Attornies, Physicians, Surgeons and Apothecaries, by Stat. 5 *H. 8. c. 6.* and 32 *H. 8. c. 40.* 6 *W. 3. c. 4.* 1 *Ann.* Teachers or Preachers of Dissenting Congregations. And by Stat. 10 & 11 *W. 3. c. 3.* all Persons who shall take and prosecute to Conviction any Felon guilty of privately and feloniously stealing any Goods,

Oath of a Churchwarden.

Who may not be chosen Churchwardens.

£c. of the Value of of 5 l. or more, by Night or Day, out of any Shop, Warehouse, Coach-house, or Stable, though such Shop, &c. be not broke open, or though the Owner or any other Person be or be not in such Shop, &c. (*Vide the Act*) are all exempted from being Churchwardens. And by Stat. 1 W. & M. c. 18. if a Dissenter be chosen Churchwarden, he may execute the Office by a sufficient Deputy by him to be provided, who shall comply with the Laws in that Behalf. And whoever is legally chosen must be an Inhabitant of the Parish.

Churchwardens can't act till sworn.

11. Till the Churchwardens are sworn, they can do no legal Act as Churchwardens, nor can they have any Authority (whatever Money they lay out on the Church Account) to make or levy any Rate, or take any other Method again to reimburse themselves; but whatever they do of this Kind, while unsworn, is all to their own Wrong; and if the Parish refuseth to pay them, they can have no Remedy in Law to force them to it. And altho' they served the Office the former Year, and were then sworn into it, yet if they are chosen again, they must be sworn again, or else the Case is the same, *Can. 89*; and therefore, for preventing of many Inconveniencies, where there are others fit to be chosen, it is not so well for the Parish to choose the same again, but rather to dismiss the old Churchwardens, and choose new ones in their Stead, according to the Statute of 27 H. 8. c. 25. which positively forbids any Churchwarden to continue in his Office above one whole Year.

C H A P. XXI.

Of Presentments made by Churchwardens.

Of their Presentments by Statutes, post.

Not to be made out of Malice.

1. **A**S to Presentments. As at the Common Law, Inquiry is to be made of Offences by Juries, so by the Ecclesiastical Laws, the Inquiry is to be made by Churchwardens; and this is the chief Design of Visitations. By the 117th Canon, Churchwardens are to make their Presentments of such Things which are given in Charge at the Visitation, but not oftner than once in a Year, where it hath been no oftner used; nor above twice in any Diocese whatsoever, unless it be at the Bishop's Visitation. But voluntary Presentments of any notorious Offenders may be made oftner.

2. Presentments which they make must not be with a malicious Design to vex the People; for if so, then an Action on the Case lies against them; but if they have a Verdict, they shall

shall not have double Costs, tho' the Statutes of 7 *Ja. 1. c. 5.* and 21 *Ja. 1. c. 12.* expressly provide that they shall, where the Action is brought against them for any Thing done by Virtue of their Office; because their Presentments are merely Ecclesiastical, and the Law-makers never intended to give double Costs, but where Officers were sued for Temporal Matters done by them in Execution of their Office. *Cro. Car. 285. Jones 530.* Tho' this Distinction seems to be very nice, for the Churchwardens are not named in the Statute of 7 *Ja. 1. c. 5.* which gives the double Costs; but that Statute being made perpetual by 21 *Ja. 1. c. 12.* the Churchwardens are declared to be within the Purview of the former Statute. Now if Officers shall recover double Costs when sued for what they do only in Temporal Matters, then this Distinction is almost in vain, because the Office of a Churchwarden, especially in making Presentments, relates chiefly to such Matters which concern a Spiritual Jurisdiction. The Time of making these Presentments is usually at *Easter*. As to the Things to be presented by the Churchwardens, they are all Things presentable by the Ecclesiastical Laws which relate to the Church, the Parson, and the Parishioners. 3 *Cr. 291. 1 Vent. 114.* The Articles delivered to them at the Visitation, are offer'd only by Way of Direction and Charge: And by the Tenor of their Oath, the Ecclesiastical Laws, and not the Articles, are the legal Rule and Measure of their Duty; for they are sworn to present such Things only as to their Knowledge are presentable by the Ecclesiastical Laws of this Realm. They are expressly required by the Canons to present all who offend their Brethren, either by Adultery, Whoredom, Incest or Drunkenness, or by Swearing, or any other Uncleannefs and Wickedness of Life. *Canon 109.* Also Schismatics, Disturbers of Divine Service, and Popish Recusants. *Vide Can. 110, 111, 114.*

3. An Oath was tendered by the Spiritual Court to a Churchwarden to present according to the Articles of the Bishop, in which were many special Things, as to present filthy Talkers, &c. and a Prohibition was granted; but if the Oath had been to present according to the Ecclesiastical Laws, and the Articles offered only by Way of Direction, in such Case a Prohibition ought not to go. 1 *Vent. 114.*

4. The Presentments are by 110th Canon required to be made at Home, yet every Visitor hath a Right of personal Examination as often as he finds Occasion for it, agreeably to the antient Practice. If Churchwardens wilfully refuse to present notorious Offenders, they are not to be admitted to the Holy Communion; and upon Proof in Cases of wilful Omiffion, their Ordinaries shall proceed against them in such Sort as in Cases of wilful Perjury in the Ecclesiastical Court, by Canon 117. And by the 121st Canon, no one ought to be

What they are sworn to present,

What Oath not obliged to take.

No one ought to be cited in two Courts for the same Crime.

If Churchwardens won't present Minister may.

Presentments concerning the Church.

Concerning the Parson.

Concerning the Parishioners.

cited into several Courts, for one and the same Crime; and neither the Archdeacon nor the Bishop's Chancellor, shall intermeddle with the Crimes or Person detected and presented in each other's Visitation, upon Pain of Suspension, until he repay the Costs and Expences which the Persons grieved have been at by the Vexation.

5. If the Churchwardens refuse to present, the Minister may present separately, but he shall not present Sins revealed to him in Confession, nor make those Sins known to any Person whatever, (except such, the Concealment whereof is Capital) under Pain of Irregularity. *Can. 113.*

6. Churchwardens are not to be cited by the Ecclesiastical Court to any greater Distance from Home than that they may return the same Day. *12 Co. 112.*

7. Churchwardens are sworn, and the Minister charged to present as well the Crimes and Disorders committed by criminal Persons, as also the common Fame which is spread abroad of them. *Can. 115.*

8. The Articles commonly exhibited to Churchwardens to make their Presentments, may be reduced thus, *viz.* To Things which concern, 1. The Church. 2. The Parson. 3. The Parishioners. 1. Those Things which concern the Church. Alms, whether a Box be kept for that Purpose; Assessments, whether made for Repairs; Bells and Bell-ropes, if in good Repair; Bibles, whether in Folio; Canons, whether a Book thereof; Church-yard, if well fenced; Commandments, if put up; Common Prayer-Book, if fair and in Folio; Communion-Table, if decent, with a Carpet; Chest with three Locks; Church and Chancel in Repair; Creed in fair Letters; Cups and Covers for Bread, &c. Cushion for Pulpit; Desk for Reader; Flagon; Font; Gravestones, if well kept; King's Arms, if set up; Lord's Prayer, if set up in fair Letters; Marriage, whether a Table of Degrees; Monuments, if safely kept and undefaced; Register Book in Parchment; Surplice, whether any; Table-cloth; Tombs, if well kept.

9. 2. Those Things which concern the Parson. 39 Articles, if duly read; Baptizing with Godfathers; Canons, if read once a Year; Catechising Children; Common Prayer, if duly read, &c. Dead, if he bury them; Doctrine, if he preach good; Gown, if he preach in it; Homilies, if read, or he preach; *January 30*, if observed; *May 29*, if observed; marrying privately, or without Banns or Licence; *November 5*, if observed; Preaching every Sunday; Peace-maker, if he be; Perambulation, if duly perform'd; Sacrament, if duly celebrated; Sedition, if vented; Sick, if visited; Sober Life; Surplice, if he wear it.

10. 3. Those Things which concern the Parishioners. Adulterers, if any; Alms-houses, if abused; Ale-houses, &c. in

in Divine Service ; Answering according to Rubrick ; Bow-
ing at the Name of Jesus ; Baptism, if neglected by Parents ;
Blasphemers, if any ; Church, resorting to it ; Dead, if
brought to be buried ; Drunkards, if any ; Fornicators, if
any ; Legacies, if any given to pious Uses ; Marrying within
prohibited Degrees ; Marrying without Bands, Licence, or at
unlawful Hours ; Sacraments received three times in a Year
by all above Sixteen, whereof *Easter* to be one ; School, if
abused ; Seats, if Parishioners are placed in them without
Contention ; Standing up, and kneeling duly ; *Sundays*, work-
ing therein ; Swearers, if any ; Women, if come to be
churched.

11. And lastly, which I fear is not duly minded, whether
any dissenting from the Church of *England*, do within their
Parish keep Schools, either publicly or in any private Fam-
ily, unless he hath subscribed the Articles, and made and sub-
scribed the Declaration above mentioned, and thereon taken a
Licence of the Ordinary to teach, and constantly come to
Church ; and therefore, if any one, without performing all
this, takes upon him in any Parish to teach and instruct Youth
in Manner as aforesaid, he is to be presented for the same.
And it being a Matter of great Moment to secure Youth from
being corrupted with ill Principles in their Education, it be-
comes Churchwardens, and also Church Governors, with
their utmost Care to do their Duty herein. For it is held,
that Dissenters, by the Act of Toleration 1 *W. & M.* c. 18.
are not exempted either from the Penalties contained in the
Statute of 1 *Jac.* 1. c. 4. or from those contained in the Sta-
tute of 14 *Car.* 2. c. 122. against teaching School without a
Licence from the Bishop. Where a Schoolmaster was sued
in the Ecclesiastical Court for keeping a School without a Li-
cence from the Bishop, contrary to the Canon, upon a Mo-
tion for a Prohibition it was denied ; for tho' the Act of Uni-
formity gives a Penalty of five Pounds in such Case to be re-
covered by Bill, &c. that doth not take away the Ecclesiasti-
cal Jurisdiction where they proceed on the Canons, which are
neither contrary to the Law, nor incroach on the King's Pre-
rogative. 2 *Lev.* 222.

Ought to pre-
sent those who
teach School
without a Li-
cence.

Spiritual Court
has Jurisdic-
tion over them.

C H A P. XXII.

What Actions Churchwardens may bring, and for what.

Monuments.

1. Churchwardens may maintain an Action for defacing a Monument in the Church. *Godbolt* 279. And so may an Heir by Descent have an Action against any one who beats down or defaces Coats of Arms, &c. of his Ancestor in the Church or Church-yard. 3 *Cro.* 367.

Goods.

2. In an Action of Account brought by Churchwardens against their Predecessors, they must declare, *quod reddant eis computum de Bonis Parochianorum*, and not *de Bonis Ecclesie*. 1 *Vent.* 89.

Not to act to the Disadvantage of the Church.

3. It is generally held, that Churchwardens have no Power to do any Thing to the Disadvantage of the Church, and therefore if they recover in an Action, one of them cannot release the Costs. So if they libel in the Bishop's Court against a Parishioner for not paying a Tax assessed on him towards the Repair of the Church, and there is a Sentence against him, and upon an Appeal to the Metropolitan, one of the Churchwardens releases, this doth not discharge the Appeal; because the Spiritual Court having the original Jurisdiction of Taxes for Repairs, shall likewise have Jurisdiction of all Matters that depend thereon, and that Court shall determine whether this Release shall bar both the Churchwardens; adjudged upon a Demurrer to a Prohibition.

For Goods, how to sue.

4. They may maintain an Action of Trespass for any Thing taken out of the Church which belonged to the Parishioners; and this the new Churchwardens may do, tho' the Trespass was done in the Time of their Predecessors. *Cro. Eliz.* 145, 179. 1 *Leon.* 177. And a Release by one is no Bar to the Action of the other, because they have no proper Interest in the Things themselves for which they sue, but are only a special Corporation for the Benefit of the Church, for which Reason they are always to conclude their Declaration *ad damnum Parochianorum*, and not to their proper Damage. 1 *Roll. Rep.* 426. 2 *Roll. Abr.* 306. 2 *Cro.* 234.

Not to sue in Spiritual Court concerning the Inheritance.

5. But the Suits which they bring in the Spiritual Court must not relate to any Thing concerning the Inheritance, 2 *Roll. Abr.* 287. therefore, if they libel for a Way to the Church, or to repair the Fences of the Church yard by Reason of Lands adjoining, or that the Defendant, and all those whose Estate he hath in such a House, have used to find Bread and Beer

Beer for the Parishioners in their Perambulation; these are all Temporal Matters, and the Allowance of such a Refreshment is in Nature of a Corrody, for which an Assize will lie. *Mic. 13 Ja. 1. B. R. The Churchwardens of Offington's Case, Hil. 15 Car. 1. B. R. 2 Rol. 287. Moor, Reynold's Case.*

6. They cannot prescribe to have Lands, because they are not a Corporation for that Purpose, *viz.* to have Lands to them and their Successors, but only for the Goods of the Church. *March 66.* But in *London*, by the Custom 'tis otherwise, for there they may take and hold Lands, *2 Cro. 532.* neither can they have any Action of Trespas at Common Law to recover Goods of which they were never possessed; but by a Bill in Equity they may have a Decree for such Goods, and they may have an Appeal of Robbery if stolen.

7. If they are cited in the Ecclesiastical Court after they have given up their Accounts, and be excommunicated, they may have an Action on the Case against the Prosecutor. *Raym. 418.*

8. They may join in an Action upon the Case for a false Return upon a *Mandamus*, for such a Writ may be brought to compel the Spiritual Court to swear a Churchwarden who was lawfully chosen by the Parishioners, according to Custom, though not according to the Canon. *3 Lev. 362. Lut. 1010.*

9. If any Thing belonging to the Freehold is broken or cut down, or the Walls, Windows, Doors, or Trees in the Church-yard, &c. the Parson or Vicar, and not the Churchwardens, shall have an Action, because the Freehold belongs to the Parson.

Not prescribe for Lands except in London.

Case for false Return of Mandamus.

If Freehold injured, the Parson must bring the Action.

C H A P. XXIII.

When and to whom they are to account.

1. **T**HEY are accountable to the Rector, Vicar, new Churchwardens and Parishioners, for what Goods and Money, &c. they have received for the Use of the Church; and this must be done at the End of the Year; and what remains in their Hands, they are to deliver to the new Churchwardens, or to the Parishioners by a Writing indented; and if they refuse to give up their Accounts within a Month after, upon Notice the new ones are chosen, they may be compelled by the Ecclesiastical Courts at the Instance of the new

To whom Churchwardens are to account.

new Churchwardets, or any of the Parish that have Interest, and who may likewise make Exceptions against it; or they may be presented at the next Visitation, or the new Churchwardens may have an Action against them at Law: But by a particular Custom they may give up their Accounts to Twenty-four of the chief Men, or to a select Vestry of a Parish; and this was the Case of the Churchwardens of the Parish of *Mafsam* in *Yorkshire*, *Batts & al. ver. Watkinson, Lutwyche's Rep. Vol. 2. 1027. ante Chap. 17. sec. 5.*

How to account.

2. At the Meeting for this Purpose, the Churchwardens having first produced the Rates which they have made, must give an Account how they have expended the Sums levied by them; and when this Account is allowed by the Parishioners then present, it is to be entered in the Church-Book of Accounts, which every Parish is to have for this Purpose, and those who allow the Accounts are there to set their Hands to it; and if there be any Money remaining over, they are to deliver it with the said Book of Accounts to the succeeding Churchwardens, to be put by them to the Account of the next Year.

Exceptions to their Accounts.

3. The Exceptions against a Churchwarden's Account may be first as to the Particulars on which the Disbursements are made, and secondly, as to the Justness and Truth of the Disbursements themselves. For if a Churchwarden hath of his own Head laid out the Parish Money, where he hath no Authority by his Office so to do, that is on new Erections, or other such Particulars, where the Consent of the Parish, or Licence of the Ordinary, or both, ought first to be had, the Parish may refuse to allow it him in his Accounts; and he may be further punished by the Ordinary for the Contempt put upon his Authority herein, if it be in a Particular where his Licence was requisite for the doing of it. And although his Disbursements be within the Limits and Power of his Office, yet if not fairly stated, there lies a just Exception against the Account; and if it appears that he hath not dealt justly and fairly with the Parish herein, but hath either charged to them more than he hath fairly laid out, or falsely and fraudulently expended more than he need, for By-Ends of his own; all those Particulars shall not only be defalked from his Account where the Fraud appears, but he may also be further punished by the Ordinary, as one that has notoriously broken his Trust, and violated the Oath of his Office by his Knavery and Falshood; and whenever any Churchwarden hath his Accounts condemned for any such Fraud, he must be condemned too in the Charges of the Suit.

Advice as to their laying out the publick Money.

4. As for avoiding all Suspicion of Guilt, it would be well if Churchwardens would not accept of any Entertainment from the Workmen they employ, or the Persons of whom they

they buy the Materials; and not to make Use of any Materials of their own, unless they call some principal Inhabitants of the Parish, and fairly agree with them the Price, before they convert them to the Use intended; or use any other Practice wherein they may have a By-End and Self-Interest of their own; for in Affairs of this Nature, a Man ought to act with the same Care and good Husbandry that he doth in his own, or rather with much more.

5. But when the old Churchwardens have thus fairly accounted before the Minister, the succeeding Churchwardens and the major Part of the Parish, and their Account is allowed by them; if they shall be called before the Ordinary for this Purpose, on their alledging and making Proof that they have already accounted before the Minister, the new Churchwardens and the major Part of the Parish, and that their Account hath by them been allowed, this is a peremptory Bar against all further Process, and they must be dismissed with their Charges, that is, when they are cited only in general to account. But if any Fraud be charged on them, and they are cited for that, no Allowance of Account can discharge them from any Fraud which they may have been guilty of in their Office. But whenever such is detected, they are accountable for it, and every Parishioner hath a Right to claim Justice against them herein, and also the Ordinary hath Power to correct them for it.

Account how
and when suf-
ficiently al-
lowed.

6. But this must be understood only of the Parish Money or Church Rates, for as to the Church Goods, they being in an especial Manner under the Care of the Ordinary, although all the Parish have allowed the Account, yet if the Ordinary be dissatisfied, he may call them *ex Officio* to account before him too, and also punish them if he finds they have disposed of any of them on what Account soever, although they have the Consent of every Inhabitant of the Parish for it, unless they have his Consent too; for otherwise the Parishioners may all combine to sell all the Church Goods and Utensils; and so leave the Church without that which is necessary for the performing of the Divine Offices; which the Ordinary is bound to prevent, for he hath as to these a Right of Trust as well as of Jurisdiction, and therefore none of them are to be disposed of, or otherwise converted to any other Use whatsoever, without his Consent had thereto.

Fraud keeps
the Account
open.

Difference as
to the Goods
of the Church.

7. If all the Parish have allowed the Churchwardens Accounts of the Church Goods, the Ordinary may nevertheless call them to account before him too, and punish them if he find Cause; but in laying out their Money, they are punishable for Fraud only, not Indiscretion. 2 *Rel. Abr.* 122. *Canon* 89, 109. And Disputes arising about the Accounts of

Churchwardens

Where Dis-
putes about
Churchwardens Accounts are to be decided.

Churchwardens, are to be decided before the Bishop or Ordinary; and for Disbursements of any Sum, not exceeding forty Shillings, their own Oath alone shall be admitted a sufficient Proof; but for all Sums above, Receipts must be produced, and all necessary Disbursements are to be allowed.

How to be reimbursed.

8. If their Receipts fall short of the Disbursements, the succeeding Churchwardens ought to pay them the Balance, and place it to their Account, by *Canon* 88. And if they have not gathered their Rates, they may present the Persons making Default in their last Presentment, or pass over their Arrears to their Successors, who shall recover the same for them. *Canon* 88, 89, 109, &c. 1 *Roll. Abr.* 121.

Law Case about Parish Books.

9. Upon a Motion for a *Mandamus* to the old Churchwardens of the Parish of C. to deliver the Parish Books to the new Churchwardens, &c. it was insisted on by the other Side, that the old Churchwardens had a Right to keep the Parish Books; so the *Mandamus* was denied: For a Contest between Parish Officers, which of them hath a Right to keep those Books ought to be tried at Law upon a feigned Issue. *The King ver. Street and Stroud, Mich. 9 Geo. 1.*

Case lies for Vexation.

10. After he has fully accounted, if he be cited in the Ecclesiastical Court, and excommunicated, an Action on the Case lies against him at whose Prosecution he was cited.

At the passing the Accounts, the Church Goods should be produced.

11. At the same Time that the Churchwardens pass their Accounts of all Money received and expended during their Office, they must also give an Account of the Church Goods committed to their Charge and Custody, which must be then brought forth, called over, and examined before the Parishioners; and after that, they are to be delivered over to their Successors by Bill indented; as must also the Keys of the Parish Chest, wherein are kept what publick Evidences belong to the Parish; to which are usually three Keys, of which the Minister is to keep one, and the Churchwardens the other two. And among other Particulars of the Church Goods which the Churchwardens have the Custody of, and are to deliver over to their Successors at the End of the Year, are the Terriers of the Glebe Lands, and the Parish Register Book; both which are carefully to be kept and preserved in every Parish.

C H A P. XXIV.

Of Actions brought against them.

1. Churchwardens may be sued in the Spiritual Court for taking away any Goods of the Church, as Bells, &c. and in such Case the Court will decree the Things to be returned in Specie; but if the Suit is at Common Law, then Damages are to be recovered. *Sid.* 281, 282.

Of Actions brought against Churchwardens.

2. *Anno* 18 *Car.* 2. an Indictment was brought against the Churchwardens of *St. Martin's in the Fields*, for taking a Silver Cup, *Colore Officii, corrupte & extorsive*, and this was for placing a Man to be a Gallery keeper in the Church. It was objected, that this was not an Office, but an Employment belonging to the Churchwardens themselves, and they might depute any Body to assist them. But the Words *corrupte & extorsive* being in the Indictment, the Court would not quash it till that Fact was tried; and if it appeared that they had accounted to the Parish for the Cup, then it might be quashed. *Sid.* 307.

Extortion in them.

3. Churchwardens and Overseers of the Poor refusing to receive any Person removed by two Justices, and to provide for them, forfeit five Pounds, on Proof of two Witnesses before one Justice, on Refusal, Distress, &c. for want, forty Days Imprisonment, by Stat. 3 & 4 *W. & M. c.* 11.

Refusing to receive Poor.

C H A P. XXV.

Of their Power and Authority in and about the Church, &c.

1. IF a Man erect a Pew in a Church, or hang up a Bell in the Steeple, they thereby become Church Goods (tho' they are not expressly given to the Church) and he may not afterwards remove them; if he does, the Churchwardens may sue him. Stat. 10 *Hen.* 4.

Of their Power and Authority in and about the Church.

2. If any one stands or sits covered in the Church, the Churchwardens may justify the taking a Man's Hat from his Head.

And Divine Service.

Head in the Time of Divine Service ; for though they may present this irreverent Behaviour in the Spiritual Court, yet they are to take Care that all Things be decently done in the Church at that Time. 1 *Lev.* 196. 1 *Vent.* 367. *Jones Rep.* 89. 1 *Mod.* 236. 1 *Lev.* 146.

Bells, &c.

3. They may order a cracked Bell to be new cast, or they may dispose of the Stones belonging to the Church ; but this must be by the Agreement of the Parishioners. 1 *Rol. Abr.* 121. So they may dispose of any of the Church Goods in their Possession, but not without the Consent of a Vestry and Ordinary. *Rol. Rep.* 426. 3 *Bulst.* 264. *Yelw.* 173. 2 *Brownl.* 215. 1 *Rol. Abr.* 393.

Of Seats in Churches.

4. Where any Contention is about a Seat in the Body of the Church, upon Complaint made to the Ordinary, he may decide the Controversy, by placing that Person in it whom he thinks fit ; and this Power is conferred upon him by Law, because he who hath the general Cure of Souls within his Diocese, is presumed to have a due Regard to the Qualities of the contending Parties, and to give Precedence to him who ought to have it. And though the Seats are built and repaired at the Charge of the Parish, and the Churchwardens should prescribe, that by Reason thereof they have used to dispose of them to such Persons as they thought fit ; yet since, of common Right, the Ordinary hath the Disposal thereof, and by the same Right the Parishioners ought to repair them ; therefore such Prescription shall not be allowed against his Jurisdiction. 2 *Lev.* 241. *Raym.* 246. And upon the same Reason, should now any Gentleman having a House in the Parish, by the Consent of Minister, Patron, and Ordinary, build a new Isle, and have a Faculty from the Bishop to hold the same, to the Use of him and his Family, to bury their Dead in the said Isle, and also to sit there, for the hearing of Divine Service, on Condition constantly to repair it, this Faculty would give him a good Title to the said Isle. But no such Title can be good, either upon Prescription, or any new Grant by a Faculty as aforesaid, to a Man and his Heirs ; but the said Isle must always be supposed to be held in Respect of the House, and will always go with the House, to him that inhabits it. *Brabin's and Tradum's Case*, *Popbam* 140. 2 *Rol. Abr.* 288, 289. *Hob.* 69. 12 *Co.* 106. 3 *Inst.* 202. 2 *Bulst.* 150. *Noy* 129. 2 *Rol. Abr.* 289. 1 *Siderf.* 88, 201. *Raym.* 52. 1 *Keble* 345. 2 *Keble* 92. Resiants only are capable of acquiring a Right in Pews ; therefore if one purchase a Pew, and after leaves the Parish, his Interest in the Pew is gone : But if he ceases to be a House-keeper, and continues in the Parish as a Lodger, and goes to Church, his Interest continues. *Cases W.* 3. 554.

5. *N. B.* That how much soever it may have been the Usage in any Place for the Churchwardens to dispose of the Seats in the Church, it can never amount to a Prescription to exclude the Bishop, because they being Officers under him, whatever they do in this Kind, must always be supposed to be done by an Authority derived from him, either positively granted as by his Faculty, or else tacitly allowed; and this must hold in *London* as well as every where else. For although in that City the Churchwardens take it wholly upon them to dispose of Seats, yet no Usage can give them a Title to do this, exclusive of the Bishop. For when any Controversy arises, they have no where else to go but to the Bishop for a Decision of it, the Common Law never meddling with this Matter, but where a Seat is claimed by Prescription; and therefore whatever Usage the Churchwardens may pretend to in any Church, for the Disposal of the Seats in it, they must be understood to do this solely by the Authority of the Bishop, as Officers under him, not by any of their own. 12 Co. 105, 106. 3 Inst. 102. 2 Bulst. 150. Hob. 69. Rol. Abr. 288. *contra*. In Prohibition for a Suit in the Spiritual Court, for a Seat in a Church, the Plaintiff suggests, that it is an ancient Seat belonging to such a House Time out of Mind, &c. and alleges that he and all those whose Estate he hath, &c. repaired it. Prohibition granted, nisi, &c. *Comber*. 169. If an Usage to sit in a Seat, Time whereof, &c. be alleged in the Spiritual Court, by the Promovent, there they may well proceed to quiet his Possession; but if a Prescription be contested there, it is to be tried at the Common Law, and consequently in such Case a Prohibition will lie. *Jacob v. Dal- low*, 2 *Ld. Raym.* 755, 756.

Not to exclude
the Power of
the Bishop.

6. By Statute 6 Geo. 2. c. 19. for making a Chapel in the *Tiverton* Cha- Town of *Tiverton*, &c. a perpetual Cure, &c. it is enacted, *pcl.* That the Wardens of this Chapel may let or sell, by Writing or otherwise, the Pews for a Term not exceeding twenty-one Years, &c. to an Inhabitant of the Parish of *Tiverton*, or else the Lease or Sale to be void. *Vide* the Act.

7. Though the Seats in Churches are generally reckoned as Parts of the Fabrick, it is upon Supposition that they are fixed into the Ground, as mostly they are; for if they be not fixed in the Ground, but are loose and moveable, they are not then to be reckoned as Parts of the Fabrick, but are of the moveable Goods or Utensils of the Church: And from this Difference have arisen Determinations of Law, which have been made concerning them. But this Jurisdiction extends only to placing or displacing the Inhabitants of the Parish; for the Ordinary cannot grant a Seat to a Man and his Heirs; nor can it be appendant to Land, but to an House, 1 Inst. l. 2. f. 184. *Sid.* 361. 2 *Keb.* 342. because a Seat in the

Seats moveable
or fixed to the
Freehold.

Church properly belongs to some House in the Parish, and not to the Person, but as Owner of the House; and if such Grant should be good to a Man and his Heirs, they would have the Seat, though they lived in another Parish, which is very unreasonable, and contrary to the original Intention of building Seats in Churches, which was for the Inhabitants of the Parish, that they might more conveniently attend the Service of the Church: And certainly if the Bishop cannot make such a Grant, no private Person can do it for the Reasons before-mentioned. *Rel. Abr.* 288. *Poph.* 150. 2 *Cro.* 366. See above *Sec.* 4. *ad finem.*

Custom where
good against
the Bishop.

8. If there be a Custom in a Parish, that the Churchwardens are to repair the old Seats, and erect new ones, and to appoint who shall sit in them, and they do erect a new Seat in the Body of the Church, and appoint a certain Person to sit there, and after the Ordinary decrees that another shall have the Seat; in this Case a Prohibition lies against him, for the Custom hath fixed the Power of disposing the Seats in the Churchwardens. *Rel. Abr.* 288. But where there is no Contention, and the Ordinary doth not interpose, because there is no Complaint, there the Parson and Churchwardens have Power to place the Parishioners in Seats, to appoint Pew-keepers, &c. and in some Parishes the Churchwardens alone have that Power by Custom, as in *London*.

When may
pull down
Seats, and
how.

9. If a Seat is built in the Body of the Church without the Consent of the Bishop, the Churchwardens may pull it down, because it was set up by a private Person without the Licence of the Ordinary; but it hath been held, that if in removing such Seat they cut the Timber or break it, an Action of Trespass lies against them. *Noy* 108. But this seems not to be Law; for the Freehold of the Church being in the Incumbent when the Person hath fixed a Seat to it, 'tis then become Parcel of his Freehold, and consequently the Right in him; so that the breaking the Timber could not be prejudicial to the other who set it up, because he has then no legal Right to the Materials after they were fixed to the Freehold.

One may pre-
scribe for a
Pew, &c. in
the Church,
and how.

10. Because Seats in the Body of the Church are to be disposed by the Parson and Churchwardens, therefore it was formerly held, that a Man could not prescribe for a Seat there, and yet he might prescribe for the upper Part of a Seat there. *Moor* 278. *Noy* 78. *Latch* 116. *Palmer* 424. But now the Law is settled as to this Matter, *viz.* that one may prescribe for a Seat in the Body of the Church, setting forth that he is seized of an antient House, and that he and all those whose Estate he hath therein, have Time out of Mind used and had a Seat in the Body of the Church for themselves and their Families, as belonging to the said House, and that they repaired the said Seat. And the Reason why he must alledge that they

repaired

repaired it is, because the Freehold being in the Parson, there must be some special Cause shewed for such a Prescription: But as to this the Court distinguished between an Action on the Case brought against a Disturber, and a Suggestion for a Prohibition: For in the first Case, you need not alledge that you repair, because the Action is brought against a Wrong-Doer; but upon a Suggestion for a Prohibition it must be alledged that you repair, because otherwise you devest the Ordinary of that Right which properly belongs to him. *12 Rep.* 105. *Noy* 129, 130. *2 Rol. Abr.* 288. *Hob.* 69. *Sid.* 88, 203. *Raym.* 52, 246. *1 Lev.* 71. *3 Lev.* 73. *2 Bulst.* 51. *Moor* 378. *2 Rol.* 24. *Lutw.* 1032.

11. As a Man may prescribe for a whole Seat in a Church, And for a Seat in a Pew, and how.
 Isle or Choir, so he may prescribe for the first, second or other Sitting or Place in a Seat. *Carlton ver. Hutton, Noy* 78. *Palmer* 424. And in these Prescriptions there is not much Exactness required, for if an Action on the Case is brought for disturbing the Plaintiff, &c. 'tis sufficient for him to alledge, that he is seised in Fee of a Messuage, &c. (without saying 'tis an antient Messuage) and that he and all those, whose Estate he hath in the said Messuage, had (without saying Time out of Mind) a Seat in the Church, which they used to repair as often as there was Occasion, &c. This is well enough, because the Action is founded on a Wrong done by one who disturbed him in his Possession; in which Action the Plaintiff will recover Damages if the Verdict is found for him. It is true, he may libel in the Spiritual Court, and prescribe there for a Seat, &c. but if the Prescription is denied, a Prohibition will be granted; if 'tis not denied, then that Court may proceed to Sentence; which if it happen to be against the Prescription, in such Case also a Prohibition will lie, because the Suit, being upon a Prescription, the Proceedings in it were *coram non Judice* in that Court; but this seems unreasonable, for it can be only to discharge the Person of the Costs which he ought to pay. *Het.* 92.

12. As to Seats in Isles of Churches, the Law is, that if a Man hath an House in a Parish, and a Seat in the Isle of the Church, which he hath repaired at his own Charge, he shall not be dispossessed by the Bishop; if he should, he may have a Prohibition, because it shall be intended to be built by his Ancestors, with the Consent of the Parson, Patron and Ordinary, and appropriated by them to his and their Use; and if ne is disturbed by any other Person in sitting there, he may have an Action on the Case against him; but then he must prove that he repaired it: And so it was adjudged between *Hawtree* and *Dee*, for Seats in a little Chapel in the North Part of the Chancel of *Peworth* in *Suffex*. For tho' no Man can tell the true Reason of a Prescription, yet some probable

Repairing will intitle a Man to a Seat in the Isle, though he lives in another Parish.

Who hath a Right to the Seats in the Chancel.

Churchwardens to see that Parishioners come to Church, and carry themselves reverently, &c.

Reason must be alledged to gain such a peculiar Right, and none is more probable than repairing it. *12 Rep. 104. Godb. 200. 2 Cro. 366. Sid. 89, 201. 2 Cro. 604. Bridgman 8. Palm. 46.* And this will intitle a Man to a Seat in an Isle, tho' he lives in another Parish; and therefore where the Plaintiff sets forth that he had an antient Messuage in the Parish of *H.* and that he and all those whose Estate he had in the same House, had a Seat in the Isle of *B.* this is a good Prescription for a Seat in an Isle, because he or they might build and repair it; tho' it is not a good Prescription to have a Seat *in nave Ecclesie* of another Parish. *Sid. 361.*

13. As to the Chancel, the Ordinary hath no Authority to place any one there, for that is the Freehold of the Rector: And so is the Church; but he repairs the one and not the other. And it is for this Reason, (tho' some are of a contrary Opinion. *Codex Jur. 22. c. 224.*) that an Impropiator hath the chief Seat in the Chancel; and repairing of the Chancel is a Discharge from contributing to the Repairs of the Church, unless for Land which are not Parcel of the Parsonage. *2 Rol. 211.* But if there be Room for any other Seats, the Bishop can grant Faculties for the building and disposing of them, in the Chancel, as well as in the Body of the Church; only if the Bishop doth not interpose, then the Parson may dispose of the Seats in the Chancel, in the same Manner, as the Churchwardens do of those in the Body of the Church, because of his repairing it. But if any Controversy arise, then there lies an Appeal to the Bishop from the one, as well as from the other. See *Watson, c. 39.* But as to this Matter, the Case is very peculiar in the City of *London*, for there the Churchwardens repairing the Chancel as well as the Body of the Church, do equally dispose of the Seats in both; but it must be still understood with the same Subordination to the Bishop, as in other Churches. But yet a Man may prescribe to have a Seat here, as belonging to an antient Messuage. *Noy 133.* And it is said, Churchwardens cannot prescribe for a Right for the Ordinary's desisting from acting, as they are not capable of Inheritance. *Rol. Abr.*

14. If a Man set up a new Pew or other Thing in a Church, he may not afterwards remove them, for they thereby become Church Goods. *Stat. 10 H. 4.*

15. Besides the Care of the Repairs of the Church Seats, &c. Churchwardens are to see that all Parishioners duly resort to their Parish Church, and there continue during the Time of Divine Service. *1 El. c. 1.* They ought to permit no Person to cover his Head in the Church, except he have some Infirmary, and then with a Cap. *Can. 18.* They are not to permit any to stand idle, walk, talk, or make any Noise in the Church, or to contend about Places; and they are

are to chastise disorderly Boys, &c. They may apprehend those who disturb the Minister, and justify the appealing any Disorder in the Church or Church-yard.

16. If any disturb a Minister officiating Divine Service, he shall be imprisoned three Months, and fined twenty Pounds, by Stat. 1 *W. & M. c.* 18. And any Person may be indicted for indecent or irreverent Behaviour in the Church, &c. 6 *Ed. 6. c.* 4. Disturbing the Minister.

17. They are to keep the Keys of the Belfry, and to take Care that the Bells be not rung without good Cause to be allowed of by the Minister and themselves. *Can.* 88. Churchwardens are also to suffer no Man to preach within their Churches or Chapels, without producing their Licence; and to take Care that all Persons excommunicated be kept out of the Church. *Can.* 50, 85. Neither Churchwardens nor the Ordinary can give Licence to bury in the Church, nor any Burial. Bells ringing; Preaching without Licence, &c. Excommunicate Persons;

18. The Churchwardens are also to take Care that the Church, with all its Chapels, Isles and Parts, be wholly kept for those sacred Uses to which it is consecrated; and that therefore no Interludes, Plays, Feasts, Church-ales, Musters, Markets, Temporal Courts or Leets, Lay-Juries, or any other profane Usage be permitted or allowed therein, or in the Church-yard belonging thereto. *Sparrow's Can.* 236. And on Sacrament Days they are to provide Bread and Wine for the Holy Communion, at the Charge of the Parish. And also to observe who they are that absent themselves from it, and present them for the same at the next Visitation. *Can.* 20, 21. *Comb.* 76. Church and Church-yard. Communion.

19. Though the Freehold of the Church and Church-yard be in the Minister, yet as he can hinder no Parishioner from having a Place in the Body of the Church for the hearing Divine Service, so neither can he hinder any such from having a Place in the Church-yard for the Burial of his Dead; but for burying in the Church it is otherwise; for none can be buried there without the Leave of him who hath the Freehold; for the Freehold being his, the Power of granting Leave to make a Grave there is solely in him. 2 *Cro.* 366. *Noy* 104. And the Fee for breaking the Soil belongs to them on whom is the Burden of repairing the Pavement; that is, to the Parson for the Chancel, and to the Churchwardens for the Body of the Church. 3 *Kable* 504, 523, 527. 1 *Vent.* 274. But if the Burial be in an Isle which the Owner doth prescribe to, and which he constantly repairs, there no Fee is due for breaking the Soil, either to the Parson or Churchwardens; because neither of them is to make good the Pavement, but he alone who owns the Isle. Only, if there be a customary Payment in this Case to the Minister (as it is rea-

sonable there should) it will be supposed to have been reserved in the original Grant, in Consideration of that Part of the Church-yard which was taken in to build the Isle upon, and then the Minister will have as good a Right to that Payment as the other to the Isle. No Fee can be due of common Right for Christening or Burying; but there may be by Custom. But then a Custom for any Person to have a Fee for Christening a Child, when he doth it not, is not good: For it is like the Case in *Hobart*, where a Person dies in one Parish and is buried in another, the Parish where he died shall not have a burying Fee. *Burdeaux v. Dr. Lancaster*. 1 *Salk.* 332, 334, *Dean and Chapter of Exeter's Case*.

Parish in different Counties, Churchwardens Authority the same in every Part of it, as if all in one County.

20. Altho' the Parish be in different Counties, yet the Authority of the Churchwardens is the same in every Part of it, as if it had been in the same County; though it is otherwise as to Constables, Overseers of the Poor, and other Parish Officers. For where there are different Tithings, different Hundreds, and different Counties, there must be different Constables and different Overseers of the Poor, although in the same Parish; and they must account for their Offices before different Justices, and at different Sessions, and different Assizes. But the Churchwardens being Officers in Ecclesiastical Affairs, must follow the Division of Ecclesiastical Jurisdiction, which is into Dioceses, Archdeacons, Deanries, and Parishes. And therefore, where there is the same Parish, the same Deanry, the same Archdeaconry, and the same Diocese, the same Churchwardens must serve for the whole Parish; and they have the same Power of executing their Office in every Part of it, in how many different Counties, or different Hundreds soever it be; and must at the same Visitation, whether of the Bishop, or Archdeacon, or other Ordinary, account for the Discharge of it. And because the Church is that wherein all the Members of it are united, of that Deanry, and of that Archdeaconry, and of that Diocese, must the whole Parish be reputed to be, in which the Parish Church stands.

The Method of settling Lands in Trust for a Parish. See below, Sect. 23.

21. Although the Churchwardens be a Corporation for the Goods of the Church, yet (as has been said) they are not so for Lands. 1 *Rel. Abr.* 393. *Kelw.* 32. and therefore, if any one gives Lands to the Parish for the Use of the Church, it must not be to the Churchwardens and their Successors; but it should be to Feoffees in Trust to the Use intended: Which is from Time to Time to be renewed as the Trustees die off; not by a bare Election made by the Survivors: For that alone is not sufficient to vest the Trust in them. But the best Course will be, that the Trustees do by Deed convey their Right and Trust over to some single Person, who shall immediately by another Deed convey it back again to them, in Conjunction with as many other new Trustees as shall be thought fit to be added

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added to them, still preserving the Lands to the Use of the original Donation. For if the Trust should by Survivorship be vested in one only surviving Trustee, and he should die before the said Trust be legally transferred to others, the Lands will descend to his Heir, and it may cost the Parish a Chancery Suit to bring back the Trust again; but see *Sect. 23.*

22. And here I cannot forbear observing, that when Lands are given to the Repair of the Church in general, it seems reasonable that this should be construed to extend to the Repair of the Chancel, as well as of the rest of the Church: For the Word Church doth equally include the Chancel as well as the Nave or Body of the Church, unless the Donation be to the Body of the Church only; In which Case the Chancel and the Minister ought to be excluded.

23. But whereas it is above said, that Churchwardens are In London, a Corporation only for Goods to the Use of the Church, and Churchwardens are a Corporation for Lands, &c. not Lands, the City of London is in this to be excepted; for there, by special Custom, the Churchwardens with the Minister make a Corporation for Lands as well as for Goods, See above, and may as such, hold, purchase, and take Lands for the Use of the Church, and sue and be sued on the Account thereof, as well as for Goods and Chattels. And this is Another Custom in London, as to the Choice of them. alledged as a Reason for the other Custom, which hath also obtained in London, for the Parishioners there to choose both Churchwardens exclusive of the Minister, who is also there excused from repairing the Chancel. Besides, if the Minister there should choose one of the Churchwardens according to the Canon, he with the said Churchwarden, as the major Part of the Corporation, may dispose of their Lands to the Damage of the Parishioners; and therefore it is not safe there to lodge so great a Trust in him. 2 Cro. 325. 3 Cro. 551, 552. Co. 1 Inst. fol. 3. Lane 22. 1 Rel. Abr. 339.

C H A P. XXVI.

Of Rates for repairing the Church, &c.

1. **A**S for Rates made either for repairing the Church, or How Rates for fencing the Church-yard, they are to be made by the Repair of the Churchwardens, who are to give a general Summons at the Church are Church, that the People may meet at a certain Time and Place made. for that Purpose, and the Majority of those who meet upon

such a Summons, shall conclude the whole Parish; but first, the Parishioners, and not the Churchwardens, are to assess the Rate. 2. The Parson, and not the Parishioners are to repair the Chancel, except in *London* by the Custom there the Parishioners repair the Chancel also. *Pense v. Prowse*, 1 *Ld. Raym.* 59. But if they refuse or neglect to meet, *vide post* §. 22.

2. If a Rate is illegally made or imposed by the Ordinary, without the Consent of the Parishioners, if they agree to it afterwards it shall bind.

Chancel not
included in
the Church.

3. Now these Rates must be made upon the whole Parish, and not upon a particular Person: And made to raise Money to repair the Church, tho' that Word may comprehend the Chancel. Yet if the Money is laid out to repair the Chancel, the Parish are not to allow it in the Churchwardens Accounts; but if 'tis expressly made for the Repair of both, 'tis illegal, and the Temporal Court will prohibit any Proceedings to recover it. 1 *Mod.* 236. A Libel was in the Spiritual Court for a Rate, for some Things lawful, and for others not warrantable by Law; a Prohibition was granted to the whole Suit. *Carth.* 360.

Prohibition
when to be
moved for.

4. If a Rate is made on Lands to repair the Church, and for dividing the Church-house and relieving the Poor, &c. 'tis too late to move for a Prohibition, after Sentence in the Spiritual Court, and to suggest, that several of these Matters are not cognizable in that Court.

Churchwardens
are to collect the
Money, &c.

5. When these Rates are made, 'tis the proper Business of the Churchwardens to collect the Money; but by Custom the Constable may be bound to do it: And therefore if a Libel is brought against him for refusing to collect it, a Prohibition shall not go, because the Spiritual Courts may try this Custom. *Hardres* 540.

There must be
a Visitation
once in three
Years.

6. Concerning Repairs, the 86 Canon requires, that every Person who hath Authority to hold Ecclesiastical Visitation, shall view the Churches within his Jurisdiction once in three Years, either in Person, or cause it to be done; and he is to certify the Defects to the Ordinary, and the Names of those who ought to repair. These Repairs must be done by the Churchwardens at the Charge of the Parishioners, and the Ecclesiastical Judge may excommunicate any, or all of them, for any Neglect in not repairing. 1 *Mod.* 194.

Question whe-
ther Repairs
are a real
Charge on
Lands, or on
Persons only.

7. It hath been a Question, Whether this is a real Charge upon all the Lands in the Parish, or only upon the Persons in Respect of their Lands? And the better Opinion is, that 'tis a personal Charge by Reason of the Lands. For where the Owner or Occupier refuses or neglects to contribute to repair, &c. the Lands cannot be sequestred, but the Persons may be excommunicated. For the Ordinary hath a Jurisdiction over them,

them, but not over their Lands; he is not to meddle with the Possessions of Laymen, but to proceed against them by Ecclesiastical Censures. 2 *Mod.* 255. 2 *Vent.* 35. 1 *Mod.* 104. However, 'tis a Charge on the Lands, that no Custom can be good to discharge it. *Hesly* 131. 2 *Rol. Rep.* 463.

See below,
Sect. 45.

8. If a Man live in one Parish, and hath Lands in another which he keeps in his own Hands, he shall be charged to the Repairs of the Church where his Lands are, and not where he liveth; for tho' the Charge is upon the Person, yet 'tis in Respect of his Lands; and as to this Purpose he is a Parishioner where his Lands are, and not where he lives. *Cro. Eliz.* 659, 843. 2 *Rol. Abr.* 289. 5 *Rep.* 66. And if he lett his Estate to a Tenant, the Tax shall be set on the Farmer, because it may not be known who is Landlord; but he is not to pay the Whole, for he may plead in the Spiritual Court, that he is only the Farmer, &c. And he is to pay no more than what the Land is worth above the Rent; and the Landlord must pay according to the Rent reserved. 2 *Rol. Rep.* 270.

They are on
Tenants.

9. If Lands lie in two Parishes, and the Owner is sued to contribute to the Repairs of the Church in one of the Parishes, for that Part of his Lands which lies in the other Parish, suggesting a Custom for it, which was denied by the Defendant, this Custom shall be tried at Law. 2 *Rol. Abr.* 308. And when the Libel is not for repairing, &c. 'tis not sufficient for the Defendant to suggest, that other People have Lands in the same Parish which are not charged; for if 'tis true, 'tis a good Allegation against the Libel in that Court, because the Rate ought to be made upon the whole Parish; and 'tis a just Cause to appeal from a Sentence there, but not for a Prohibition. *Rol. Abr.* 290, 291. 2 *Rol. Rep.* 262, 206.

Custom triable
at Law.

Cause of Ap-
peal.

10. The Spiritual Court hath original Jurisdiction of Repairs of Churches; and Rates for that Purpose, being an Incident to Repairs, they have the Jurisdiction in those Cases; and when a Suit is brought in that Court against the Defendant for a proportionable Part of such a Rate, he may be compelled to put in his Answer upon Oath, whether he hath paid or not; for the Usage being for them to require Oaths about Payment of Rates, hath likewise made it the Law of the Court. 2 *Lev.* 247. 1 *Vent.* 339.

Defendant
compelled to
Answer upon
Oath in Spirit-
ual Court.

11. We have some Ornaments in our Churches, 'tis true, tho' but mean in respect to those in other Nations; especially among the *Roman Catholics*, who spare neither Art nor Cost to adorn their Churches with the utmost Magnificence, while the Reformed grudge to spare from their own Pride such Ornaments as will scarce make their Churches neat and decent; and for these the Charge is upon the personal Estates of the Parishioners, and not upon their Lands, so that if a Rate is made to charge the Lands, a Prohibition will be granted. 2 *Rol. Abr.*

Of Ornaments
in Churches.

Parishioners
chargeable
with them.

Majority bind
the Minority.

In some Cafes
Lands are
chargeable.

In what Cafes
a Prohibition
was denied.

Major Part of
a Parish may
rebuild the
Church.

Abr. 291. 2 Rol. Rep. 262, 270. See below, Sect. 22, 25. 'Tis for this Reason that a Person must be charged where he lives, and not where his Lands are; for if the Libel is for Ornaments, 'tis a good Plea to say, that he was not a Parishioner there at the Time of the Rate made. *2 Rol. Rep. 292.*

12. The Rate must be made upon all the Parishioners of Ability; and none are to be excused. And 'tis the Majority in this Case, as well as in the other for Repairs of the Church, which conclude all the Rest. But then they must be assembled at a Vestry after publick Notice; therefore where a greater Part agreed to have a fifth Bell, and the less Number disagreed, yet the whole Parish was concluded. *2 Rol. Abr. 291.*

13. But tho' generally Lands ought not to be rated for Ornaments, yet by a special Custom, both Lands and Houses may be liable to it; and so it was held *Hil. 9 W. 3. in B. R. between Hawkins and Rowse, viz. The Churchwardens of the Parish of St. Edmund on the Bridge of Exeter, libell'd against the Defendant, setting forth an antient Custom within the Parish, that they and their Predecessors had adorned the Inside of the Church at the publick Charge of the Owners and Occupiers of antient Houses within that Parish, by a Rate made by them with the Consent of the major Part of the Parishioners, having Respect to the annual Value of the said Houses; and this was held to be a good Custom. So when a Rate was made on Lands to repair the Church; to make a new Clock and Chimes; for Bread and Wine at the Sacrament; for Clerk's Fees; for dividing the Church-House into several Rooms for the Use of the Poor; for the Relief of poor Prisoners in the Marshalsea, and for Expences at several Visitations; the Court would not grant a Prohibition, tho' it was objected, that this Rate was made for several Matters, of which the Spiritual Court hath not any Jurisdiction, viz. to repair the Church-House, and for Relief of poor Prisoners; and likewise for Chimes, which are Ornaments, and for which Lands ought not to be rated. 'Tis true it was after Sentence, and an Appeal to the Arches; and in such Cafes, a Prohibition is always denied, if nothing appears in the Libel itself to oust the Spiritual Court of Jurisdiction. 2 Lutw. 1019.*

14. If a Church is so much out of Repair that 'tis necessary to pull it down, in such Case upon a general Warning to the Parishioners, having first obtained the Consent of the Ordinary to do what is needful, the major Part meeting may make a Rate for pulling down the Church and rebuilding it on the old Foundation, making Vaults, &c. and it shall be good; and if any Parishioner refuse to pay his Proportion, the Churchwardens may libel against him in the Ecclesiastical Court. And it has been held, that if a Parish be increased, the greater Part of the Parishioners, with the Consent of the Bishop, have Power

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to raise a Tax for the necessary enlarging it, as well as the Reparation thereof. *2 Mod. 222. 1 Mod. 237.* But *Qu.* of this; for it is usual to procure an Act of Parliament on such Occasions, containing a Clause for altering the Site; which would be needless if it might be altered by the Parishioners with the Bishop's Consent.

15. The Communion Tables are to be kept in Repair in Churches, and covered in Time of Divine Service with a Carpet, &c. and the Ten Commandments must be set up at the East End of every Church or Chapel, and other chosen Sentences of Scripture upon the Walls. And at the common Charge shall be provided a strong Chest with a Hole in the upper Part thereof, to collect the Alms for the Poor, which is to have three Keys, one kept in the Custody of the Parson, and the other two by the Churchwardens, and the Money collected shall be quarterly distributed in the Presence of the chief of the Parish. *Can. 82, 83.* And by the 85 Canon, the Churchwardens shall take Care that the Churches, *i. e.* all Parts of them, except the Chancel and private Isles, or Chapels belonging to private Persons, be well and sufficiently repaired, the Windows well glazed, and the Floors kept paved, plain and even. And the Churchwardens of every Parish are bound to provide at the Charge of the Parishioners, a Font, Communion Vessels and Furniture, Vestments for the Ministration of Divine Service, a decent Pulpit, a convenient Seat for the Minister to read Service in, a Book of Common Prayer, a large Bible, a Book of Homilies, and a Parchment Book for the Registering of Christenings, Weddings and Burials; besides these, tho' not absolutely necessary, yet the Parishioners may be bound by an Agreement of the Majority of them met in Vestry to furnish, as Bells, Pulpit-cloth and Cushion, Organs, Conveniences for Kneeling at Prayers and Sacrament, &c.

Communion Table, &c.

What Ornaments, &c. Churchwardens are obliged to provide.

16. Tho' the Freehold of the Church-yard be in the Parson, yet being the common Burying-Place of the Parishioners, the fencing and keeping it in good Order belongs to the Parish and the Churchwardens are to take Care of it accordingly. But if the Owners of Lands adjoining to the Church yard have used Time out of Mind to repair so much of the Fence thereof as adjoined to their Ground, the Churchwardens, if they neglect it, have a good Action against them at Common Law; but if they sue in Court Christian, a Prohibition will be granted, because it is in order to charge a Temporal Inheritance. *2 Inst. 489. 2 Rol. Abr. 289.* Tho' generally the Cognizance of Rates made for the Reparation of Churches and Church-yards belongs to the Spiritual Court, and no Prohibition will lie where it punishes for Neglect of it. *13 Ed. 1. c. 1.*

Church-yard to be duly fenced.

Owners of Lands contiguous liable, when.

An Improprator having Lands in the Parish. So where a Chapel in a Parish.

17. An Improprator of a Rectory or Parsonage, who is bound to repair the Chancel, is bound also to contribute to the Reparations of the Church, in Case he hath Lands lying in the Parish. *2 Rol. 211.* And the Inhabitants of a Precinct where there is a Chapel, tho' it be a Parochial Chapel, and tho' they do repair it, yet they are of common Right contributory to the Repairs of the Mother-Church, unless they can plead a Prescription Time out of Mind, or by Composition. *2 Rol. 265. Hob. 66.* In Case the Hall of a Company be rated to the Repairs of a Church, the Spiritual Court may proceed against the Master and Wardens of the Company, if the Rate is neglected to be paid. *1 Mod. 236. 2 Mod. 222.*

18. Churchwardens are to join with the Constables in choosing Surveyors of the Highways.

But not Tenant of a Stall in a Market.

19. A Man had a Lease of a Stall in a Market-Town, where he sold Goods once a Week, but lived in another Parish, he shall not be charged to the Repairs of the Church in the Market-Town. *2 Rol. 228.*

Parishioners not to repair the Chancel.

20. Tho' the Majority of the Parishioners at a Meeting may make a Rate to oblige the whole Parish, for altering the Place of the Communion Table, and carrying it into the Chancel, and for raising the Ground for going up Steps to it (for they are compellible to put Things in decent Order, and there is no Rule for Decency but the Judgment of the Majority of the Parish) yet the Majority shall not bind the Rest, in repairing and adorning the Chancel, because that lies on the Parson.

Chapels when exempt, or not.

21. If those of a Chapelry have always christened and buried within themselves, they may prescribe to be exempt from repairing the Mother-Church; for in such Case, the Chapel shall be intended to be coeval with the Church, and not built since for their Ease. But if there is a Chapel of Ease, which one Part of the Parish hath always used to repair, and to hear Divine Service there, but bury at another Church, they must contribute to repair that Church. Where the Prescription is in repairing a Chapel, &c. 'tis necessary to alledge that it hath Parochial Rites; for, if but one is omitted (as Burial) they shall contribute to the Mother-Church. *Comber. 132.* And where a Chapel had Parochial Rights, but had been forty Years out of Repair, and no divine Service in it for all that Time, the Court denied to prohibit a Suit in the Spiritual Court to compel to pay to the Repairs of the Mother-Church, tho' Chapelwardens had been yearly chosen. *Comber. 148.*

Parish unequally rated, to plead it in the Spiritual Court. Bishops cannot appoint Commissioners to

22. If the Parish is unequally rated, those who are grieved must plead it in the Spiritual Court, being sued there; for they cannot have a Prohibition, it being of Ecclesiastical Cognizance. *2 Rol. Abr. 291. 1 Vent. 367.* But the Bishop of the

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the Diocese cannot appoint Commissioners to rate a Parish for Repairs of their Church. 2 *Mod. Rep.* 8. *Curtis's Case*. The Spiritual Court may, by their Ecclesiastical Censure, compel the Parish to repair the Church; but they cannot appoint what Sums are to be paid for that Purpose, because the Churchwardens by the Consent of the Parish, are to settle that. And if there be publick Notice given to the Parishioners, and they will not come, the Churchwardens may make a Rate without them. *Comber.* 344. And the Spiritual Court hath a Jurisdiction to proceed against Parishioners for not repairing the Fence of the Church-yard. But if the Owner of the adjoining Ground be obliged by Prescription to repair, that is no spiritual Matter. *Ibid.* 298. And if more be raised than is necessary, the Churchwardens are accountable for the Overplus, they not being able to compute to a Shilling. If any of the Parishioners refuse to pay their Proportion, they may be libelled against in the Spiritual Court; and if the Libel alledge the Rate to be *pro Reparatione Ecclesiæ* generally (tho' in Strictness *Ecclesia* contains both the Body and Chancel of the Church) yet by the Opinion both of the Court of Common Pleas and of the Exchequer, it shall be intended that the Rate was only for the Body of the Church. The Bishop, much less the Chancellor, cannot set a Rate upon the Parish, but it must be done by the Parishioners themselves.

Rare by Churchwardens without the Parishioners, when.

A Rate *pro Reparatione Ecclesiæ*, generally, is good.

23. Church Reparations extend to Church-yard Walls, the Walls of the Church, and Steeple, the Floor, the Pulpit and the Pews; the Windows, Iron Bars, and Glafs; the Roof, Timber with Lathes, Nails, &c. the Covering of Lead, Tiles, &c. the Doors with Locks and Keys, Stairs, Floors, Bells, Wheels and Ropes in the Steeple.

What are Church Reparations:

24. The Ornaments for which Parishioners are chargeable, are the Communion Table and Coverings of the Communion Cups, the Bread and Wine, Candles, the Bible and other Books appointed to be read in Churches, the Surplice, Pulpit-Cloth and Cushion, the Clerk and Sexton's Wages, &c. washing the Church Linen, and Monies disbursed by Churchwardens about the Parish Business; these are to be raised by a Rate or Tax on the Parishioners regularly, and not on Lands. 2 *Rol.* 291.

What are Church Ornaments to be charged on Parishioners.

25. But tho' Lands ought not generally to be taxed for Church Ornaments, yet by Custom both Lands and Houses may be liable to it. 2 *Inst.* 489. *Cro. El.* 843.

Tho' Lands may be liable by Custom.

26. If the Churchwardens erect or add any Thing new in the Church, as a new Gallery, &c. where there was none before, they must have the Consent of the major Part of the Parish, and also the Licence of the Ordinary. 1 *Mod.*

To what the Churchwardens must have the Consent of the Ordinary.

The same Custom at Norwich, &c. as in London.

In some Places the Vicar repairs the Chancel.

Churchwardens must present if Parsonage House be out of Repair.

And they must see that the Church-yard be kept neat and clean.

And the Gates, Stiles in good Repair.

No Door into the Church-yard without Licence from the Bishop.

27. It has been already mentioned, that in the City of *London*, by immemorial Custom, the Parishioners repair the Chancel as well as the Body of the Church; and this Custom is also in the City of *Norwich*, and some other Cities and large Towns in *England*, where there are no Tithes to be charged with this Repair, or to be sequestred if neglected. Also in some Churches the Vicar is by special Composition bound to this Repair, and then the Vicar hath the Freehold of the Chancel, as well as of the Body of the Church and Church-yard; the former by Virtue of this Composition, the latter by Virtue of his Induction. For every Vicar, when he is inducted into the Church, takes Possession of the Body of the Church and the Church-yard as of his Freehold, and is then as it were by Livery and Seisin admitted thereto, as the Rector is by like Induction to the whole Church. *Watson* 304. But though the Churchwardens are not charged with the Repair of the Chancel, yet they are with the Supervisal both of that and the Minister's House, to see that neither of them be permitted to dilapidate and fall into Decay; and when any such Dilapidations shall happen in either of them, if no Care be taken to repair them, they are to make Presentment thereof at the next Visitation.

28. Anciently, both the Church and Church-yard were repaired out of the Revenues of the Church; and a fourth Part of them, according to the primitive and well-known Division of them, was always set apart for this Purpose. But now it is the Churchwardens Duty to see that not only the Church, but also the Church-yard, be kept in decent and fitting Manner; that it be cleared of all Rubbish, Muck, Thorns, Briars, Shrubs, and every Thing else that may annoy the Parishioners when they come into it, or be any Hindrance to them in their burying the Dead; that no Sinks or Gutters be made through it, or any Thing else be there permitted, which may be unbecoming the Place which is consecrated and set apart to be a Repository for the Bodies of the Faithful, which were once the Temples of the Holy Ghost.

29. They are also to see that the Gates, Stiles and Doors leading into the Church-yard be kept in due Repair. But if any one hath a private Door leading into the said Church, or a private Way through it, the Parish is not to be put to Charge about these, they must be repaired by him that hath the Use of them. But here it is to be observed, that no one can make any such private Door into the Church-yard, or any such private Way through it, without the Consent of the Minister, whose Freehold the Church-yard is, and a Faculty also from the Bishop for the same. But if the Inhabitants of any ancient Messuage, next adjoining upon the Church-yard, have immemorially, they and their Ancestors, had a Way through the

said

said Church-yard, and constantly have repaired the same, they can prescribe thereto, in respect of the said Messuage; and so if the Owners of any Lands adjoining to the Church-yard have immemorially, they and their Ancestors, had a Way thereto through the said Church-yard, and constantly have repaired the same, with the Gates and Stiles leading into it, they can also prescribe thereto, in respect of the said Land. 2 *Roll. Abr.* 265. *Comb.* 298.

But Persons may prescribe for a Way, &c.

30. As the Soil of the Church-yard is the Minister's, so also are the Trees growing therein; but he is not to cut them down, unless for the necessary Repair of the Chancel, or else that he shall think fit, out of Kindness to the Parishioners, to allow them to them for the Repair of the Body of the Church; but where they use to be topped, the Toppings belong to the Minister. Statute 35 *Ed.* 1.

Trees in the Church-yard belong to the Parson, how.

31. Although perhaps Churchwardens need not the Advice, Consent or Authority either of the Minister, Parish or Ordinary, as to the Repairing or Amending any Thing which belongs either to the Fabrick, Church-yard or Utensils of the Church, but are themselves sole Judges of what is needful to be done herein, as being invested with the Authority of the Ordinary, and the whole Trust of the Parish, for this Purpose, on their first entering on the said Office: Yet it is very proper and adviseable, for the greater Content and Satisfaction of the Parish, that they do not enter on any great and chargeable Repairs, without first taking the Advice of their Neighbours, who are to bear the Charge of them. But if they will act without any such Advice, by Virtue of their Office, they have Power and Authority so to do; and though the Money be imprudently and improvidently, yet if it be truly and honestly laid out, they must be reimbursed again, and the Parishioners can have no Remedy herein, unless some Fraud or Deceit be proved against them, which must and will be at all Times redressed. Which is spoke by Way of Caution, that Parishioners may be warned how they trust such Men in this Office, who are not fit for it; or if they do, not fruitlessly to commence Suit against them afterwards, for what they can have no Redress. Though if through Improvidence, Indiscretion or Negligence, they waste the Church Goods in their Custody, or otherwise much damnify the Parish, they may, on Proof thereof, by the Authority of the Ordinary at any Time be removed, and others chosen in their Stead. 8 *Ed.* 4, 6. *Finch, lib. 2. c. 17.* 13 *Co.* 70.

*Tis best for Churchwardens to have the Consent of the Parish in great Repairs, &c.

But if they will not, Parishioners have no Remedy but in Cases of Fraud.

And then they may be changed.

32. But if the Churchwardens add any Thing new, either to the Fabrick, Church-yard, or Utensils, which was not before, they must have the Consent of the major Part of the Parish, or else the Parishioners may refuse those Disbursements in their Account; for to such Expences they cannot be charged without

But for new Additions, must have Parishioners Consent.

And also Licence from the Ordinary.

But not if not in the Church.

If in the Chancel, must have Consent of the Parson.

Any one with proper Consent may set up Rails round the Altar.

How Churchwardens are to do it.

without their Consent: Nor will the Law, in this Case, allow any Rate to be good that shall be made in order to it. *Jeffrey's Case*, 5 Co. p. 66, 67. *St. Saviour's Parish's Case*, Lane 21. *Hetly* 61. *Littleton* 263. *Popham* 137. 1 Mod. Rep. 194 and 236. 2 Mod. Rep. 222. 1 Vent. 167. And if the new added Particulars be in the Church, the Licence of the Ordinary is also necessary, as well as the Consent of the Parish, before they can be legally and justifiably added or new erected there; and therefore though the major Part of the Parish be consenting to the new Addition, and thereby the Churchwardens may be empowered, as far as in the Parishioners lieth, to make and levy a Rate for the reimbursing themselves of the Charges; yet if any one Person in the Parish dissent from it and refuses Payment, they can have no Remedy against him, because the Thing being illegally done, and without that Authority which the Law requires to warrant it, no Rate will be judged legal which shall be made for it. But if the Thing which is added, be not in the Church, nor is added to the Fabrick or its Appurtenances for any religious Use, but only for the Benefit, Convenience, or Curiosity of the Parishioners; as a Clock, a Dial, Chimes, an additional Bell, &c. in such Case the Licence of the Ordinary is not requisite; but it will be sufficient if the major Part of the Parish be consenting thereto.

33. But if the new Erection be in the Chancel, the Leave of the Parson is also necessary, because the Chancel belongs to him, and is a Part of his Glebe; and therefore, if the Churchwardens set up any new Seat in the Chancel, or place Rails there at the Altar, they must have not only the Consent of the Parish, but also the Leave of the Parson, as well as the Licence of the Ordinary, before it can be legally done. And therefore if the Parson with the Licence of the Ordinary, or any other Person with the Consent of the Parson and Licence of the Ordinary, have a Desire to set up Rails at the Altar at their own proper Costs and Charges, without concerning the Parish to give any Thing towards it, the Parish is no Way concerned, either to give or deny their Consent thereto.

34. The Rails at the Altar being not required by any Law, or of themselves absolutely necessary in any Church, as they cannot be first erected without the Consent of the Parish and Parson, and the Licence of the Ordinary first had thereto; so neither after forty Years Disuse (the utmost Limit of Ecclesiastical Prescription) can they be again restored without the same Consent and Licence to authorize the Churchwardens to do the Thing, and levy a Rate upon the Parish for it. And therefore though it be very decent and fitting, that there should be Rails in every Church to keep the Communion Table, at which the highest Mystery of our Holy Religion useth to be celebrated

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celebrated, from that Profanation which it may otherwise be exposed to (and which is all that is intended by them;) yet since this is a Matter which often raiseth great Contests and Disturbances in Parishes, among weak and scrupulous Persons, it is proper that Churchwardens have this Advice given them, that they enter on no such Attempt, unless in such a legal Way as may justify them in the doing of it.

35. No Parson or Vicar can be charged to the Repair of the Church in any Parish by Reason of their Tithes and Glebes therein, because out of them they are bound to repair the Chancel; but if they have any other Estate in the Parish, they are chargeable for that as well as other Parishioners; and altho' one of them only repairs the Chancel, and the other be exempt, yet if either of them do it, both are discharged from all Rates to the Church. But if no Composition appears for the laying it on the Vicar; of common Right, it belongs to the Parson to do it: And if the Glebes be out of the Parish (as sometimes they are) their being Glebes in this Case cannot exempt from being charged to the Repair of the Church in that Parish where they lie: For no Glebes are to be excused Church Repairs, but such as belong to the Church which is to be repaired, not those which belong to another Church out of the Parish in which the Land lies. For, in that Parish no Repairs of the Chancel lie upon them; and therefore they are on the same Foot with the other Lands of the Parish; and consequently must be charged equally with them to all the Burdens of it.

Recltor or Vi-
car not charged
for Glebe.

But they may
if the Glebe
lies in another
Parish.

36. All those who are so poor as to be excused from paying to the Poor's Rate, by Reason of their Poverty, ought also to be excused from paying to the Church Rate for the same Reason; and those who pay nothing to the Church, ought not to have any Vote in any Affairs relating to it. But this must not be understood of the Minister who hath a special Duty incumbent on him in this Matter, and must be responsible to the Bishop for his Care herein; and therefore in every Parish Meeting he presides for the regulating and directing this Affair: And this equally holds, whether he be Rector or Vicar.

Those not ra-
ted to the Poor
ought not to be
charged, &c.

37. If the Churchwardens defer to make or gather their Rate till they are out of their Office (as is thro' Mistake or Negligence too often done) they are then deprived of all legal Authority of doing either; and therefore they ought to take Care, after they have well surveyed and computed the Repairs, to make and gather the Rate as soon as they conveniently can, and within the Time of their Office prosecute all such who refuse to pay what they are rated to it; or at least present them in their last Presentment at the Easter Visitation, when they go out of their Office. But if it happen that there be no such Prosecution begun, or Presentment made before they were out of their Office, then they may, on their giving up

What Church-
wardens must
do if they
can't collect
the Rate with-
in their Year.

their Accounts, pass over their Arrears, with the Rate on which they are due, to their Successors, who have full Authority to sue for and recover the same; all such Arrears being a Debt due to the Parish, which they are by their Office to take Care to recover for them.

38. Two Justices (*Quorum unus*) may make their Warrant both to the present and subsequent Churchwardens, to levy all Sums and Arrears of every one who shall refuse to contribute according to Assessment, and in Default of Distress, commit them to Gaol till Payment be made. *Dalton* 155. *This is delivered for Law by Mr. Dalton, but I do not remember any other Authority for it.*

Houses as well as Lands are chargeable.

39. Houses as well as Lands are chargeable to these Repairs, and in some Places Houses only, as in Cities and large Towns where there are Houses only and no Lands to be charged hereto. *Hetty* 130.

Whether those who live out of the Parish shall be charged for Lands in the Parish, for Ornaments, &c.

40. There are different Opinions, whether Lands occupied by those who live out of the Parish, shall be charged only towards the Repairs of the Body of the Church and Churchyard, with their Appurtenances; or whether they shall not be charged towards the Ornaments and incident Charges of the Church also. The former Opinion is supported by *Bulst.* 20. 2 *Rel. Abr.* 291. 2 *Rel. Rep.* 270. *Godolphin's Repertorium*, c. 12. *sect.* 29, 34, 41. *Degg*, c. 1. p. 12. But now the Practice generally goes according to the latter Opinion; namely, that they shall be charged to both; and the Ecclesiastical Judges as well as the Temporal, for the Sake of the Ease and Convenience which accrues from the making of one Levy for all, give Countenance hereto, and begin to treat the contrary Opinion as obsolete and out of Doors. Concerning this whole Matter, see 5 *Co.* 67. 2 *Brownlow* 10. 1 *Bulst.* 20. 2 *Rel. Abr.* 291. *Degg*, c. 12. *Godolphin's Repertorium Canon.* c. 12. *sect.* 23, 26, 29, 34, 41. *Comb.* 132.

41. And a Man living in one Parish, and holding Land in another, may be taxed towards the new Casting of the Bells of the Parish where his Lands are; for they are more than Ornaments.

Church Rates ought to be made and laid equally.

42. And when a Church Rate is to be made, it ought to be laid on all by an equal Pound Rate, according to the yearly Value of the said Lands or Houses, without grieving or overcharging any one, or sparing and easing another, or leaving any out of the Rate who ought to be charged to it. For if any be over-charged or others under-charged, the Ordinary will condemn the Wrong done, whenever it comes before him; but if any one be left out, who ought to be charged to it, 'tis an Injury to the whole Parish; and this is a sufficient Reason for the Ordinary (on Complaint made to him) to quash the whole Rate, and send the Churchwardens to make a new one.

If not, the Ordinary will redress it.

And

And in all these Rates it will be fairest for the Churchwardens not to assess themselves, but to leave this to be done by the Parishioners, who concur with them in making the said Rate. A Justice of Peace cannot impose a Tax for the Repairs of a Church. 1 Mod. 194.

Fairest for Churchwardens not to assess themselves, &c.

A Rate or Tax for the Repairs of a Church.

43. **W**E the Churchwardens, Overseers of the Poor and Parishioners of the Parish of F. in the County of M. whose Names are subscribed, do hereby rate and tax all and every the Inhabitants of the Parish, &c. here under mentioned, for and towards the Repairs of the Church of the said Parish, in the several Sums following, viz.

	l.	s.	d.
A. B. For one Tenement, &c. _____	0	8	6
C. D. For his Lands called, &c. _____	0	7	0
E. F. For one Messuage _____	0	5	0
G. H. For one Tenement, called, &c. _____	0	4	6

I. K.	}	Churchwardens.
L. M.		
N. O.		
P. Q.	}	Overseers of the Poor.
R. S.		
T. U.	}	Parishioners.

44. If any plead a Prescription to be exempt from those Rates in Respect of any of their Lands or Houses, it cannot be allowed without special Cause shewn. A Patron, as in the Right of the Founder, may prescribe not to pay to the Repairs of the Church, by Reason of the Foundation; and if he hath been immemorially freed, it will be a good Reason for the Discharge. And so if an Hamlet having a Chapel of Ease, which they constantly resort to, and have always repaired, have instead of being rated to the Mother-Church equally with the other Parishioners, immemorially paid a set Annual Sum in Lieu of it; this will be allowed to be a good Prescription; for it will be supposed that it was originally done upon an Agreement made upon some just Consideration with the whole Parish; and they have a Power to bind their Successors thereto. But if there be no such Payment alledged, the Prescription will not be good. *Hobart 67. Noy 41. 2 Rol. Abr. 289, 290.*

Parson and Vicar are exempt for their Tithes and Glebes, &c. Prescriptions for Chapels, &c.

45. If a Parish plead a Custom for it to be laid only for Lands, and not for Houses; or to be laid only for Arable Lands, and to be excused for their Pastures; or to be laid only for their Sheep-walks, and not for the rest; the Custom cannot be good; for by the Law, all Lands and Houses are to be equally rated,

All Lands and Houses to be equally rated.

What Church
is to be re-
paired.

Churchward-
ens must see
that Church-
ways be kept
in Repair, &c.

Any Parishio-
ner may pre-
scribe for a
Way to the
Church.

And may sue
for it in the
Spiritual
Court.

and their paying for some Part can be no good Cause for the discharging of the rest. *Hethy 130. Latch 203.*

46. No Church new built is esteemed as such in Law till Consecration; which being done, the Parishioners are then to repair it. *1 Cro. 367.* If a Question should arise whether 'tis a Church, or Chapel belonging to the Mother-Church, and any Proof can be made that Sacraments have been administered, and the Dead buried, then 'tis by the Law accounted a distinct Church.

47. The Churchwardens are also to see that the Churchways be well kept and repaired; and that no one do any Thing to obstruct or annoy the same; that so the Parishioners may at all Times, without Impediment or Inconvenience, resort to the Church as often as any Part of the Divine Service shall be there performed. The said Ways must be broad enough not only for the Passage of single Persons, but also for the carrying of a Corpse thro' the same to be buried, as often as there shall be an Occasion for it. And the Stiles are to be so made, that Persons of all Ages may be well able to go over them. If these Ways be in the Repair of the Parish, the Churchwardens must take Care that they be well repaired at the Parish Charge; but if they are to be repaired by any other, either by Custom or otherwise, they are due by Course of Law, to compel all such to do what they ought to do in this Particular; that all may have a free and convenient Passage to the Church, where God is to be worshipped by them, and none be obstructed or incommoded herein. Ways which lead to Churches are only private, because they belong to the Inhabitants of particular Villages; and therefore if the Churchwardens libel for a Way for all the Parishioners, and the Defendant suggests that 'tis a common Highway, a Prohibition will be granted.

48. Any Parishioner may prescribe to have a Way to the Church, but in the Prescription he must set forth what Way, viz. whether a Horse or Foot-way, and from whence, and through what Place it leads to the Church; and this will be a good Justification in an Action of Trespass. *2 Rol. Abr. 287.* If the Churchwardens sue in the Ecclesiastical Court for a Church-way, which they claim to belong to all the Parishioners by Prescription, a Prohibition lies, for this is not of Ecclesiastical Cognizance. *2 Rol. Abr. 289. P. 16 Ya. 1. B. R.* between the Inhabitants of *Bythorn and Bow.* The Right to a Church-way may be claimed and maintained by a Libel in the Spiritual Court. A Church-way may commonly be claimed as a private Way. *2 Rol. Abr. 287.* Prescription for a Church-way may be pleaded by any Inhabitant in the Spiritual Court. *2 Rol. Abr. 41.*

For several Instances of their Duty concerning Vagrants, see *Chap. XXXIII. passim.*

CHAP.

C H A P. XXVII.

Of the Union or Consolidation of Churches.

1. **W**HEN two Churches are united or consolidated, the Rates and Repairs are still to be separate as before, *Hob. 67.* and therefore, tho' one of the Parish Churches be demolished, and the Parishioners constantly make Use of the other, and have Seats in it, yet they cannot be charged to any of its Repairs or other Expences. Which is to be understood only of Country Parishes, consolidated by Virtue of the Statute of 37 *Hen. 8. c. 21.* for, as to such Parishes in Cities, and Towns corporate, which have been, or shall be consolidated by Virtue of the Statute of the 17th of *Charles 2. c. 3.* Remedy hath been provided by the Statute of 4 & 4 *W. & M. c. 12.* whereby it is enacted, that in all such Consolidations, if one of the Churches is or shall be demolished, the Parishioners of the demolished Church shall pay to the Repair of the other according to the Proportion which the Bishop of the Diocese shall direct, and till such Directions be given, shall bear one third Part of the Charges. And it would have been well if the same had extended to all other Consolidations also. For want of it, many Parishes who have their own Churches demolished, enjoy the whole Right and Benefit of Churches in other Places, and pay no Church Rates at all.

Of the Union
or Consolida-
tion of
Churches, &c.
by Stat. 37 H.
8. c. 21.

2. But tho' Consolidations by this Statute cannot extend hereto, yet Consolidations by Common Law may. For, before the said Statute of 37 *Hen. 8. c. 21.* there was a Power by the Common Law in the Bishop, with the Concurrence of the Patrons and Incumbents to consolidate any two contiguous Churches; and the said Statute as well as that of 17 *Car. 2. c. 3.* being both in the Affirmative, and not in the Negative, do not it seems destroy the Common Law in this Point; so that such Consolidations, as might lawfully have been made before the said Statutes, may be still made at this Day. 'Tis true no Consolidations at Common Law were good without the previous Consent of the King, or his subsequent Confirmation: but these Statutes do limit what Consolidations may be now made without the King, that is by the Bishop, with the Consent of the Patrons and Incumbents of the Parishes consolidated. And therefore Consolidations so made, without the King, by Virtue of the said Statute, can extend no further than is by the said Statute enacted. Consolidations at the Common Law seem still to be left as they were before the said Statutes were made.

Of Consolida-
tions of
Churches at
Common Law.

And for what
Reasons.

Bishop may
unite Churches
in whatever is
of Ecclesiastical
Jurisdiction.

But not good
in Corpora-
tions without
Consent of
Mayor, &c.

3. And by the Common Law, the Bishop with Consent of the Patrons and Incumbents might consolidate any two contiguous Parishes, upon the following Reasons. 1. The Vicinity of the Churches. 2. The Paucity of the Inhabitants of one or of both the Parishes. 3. The Inability of one of the Parishes to keep up their Church by Reason of their Poverty. 4. The Meanness of one or both of their Livings, as not being able to maintain a Minister so as to enable him to keep Hospitality. 5. If the said Parishes had at first been illegally severed. And the Manner of effecting it was, 1. A Commission of Enquiry issued to examine into the Truth of the said Reasons. 2. All Persons concerned, were to be legally cited to alledge what they had to say about it. 3. On hearing all Parties, a Decree was made for the Legality of the Consolidation. 4. The true Value of both the Livings consolidated was to be put into the Instrument of Consolidation: and many other Niceties and Formalities were to be observed, a Failure of any one of which made a Nullity in the whole. And therefore to salve this, the Authority of the Pope was called in, and his Confirmation made good all Defects. And what Power the Pope had used, was, on the Abrogation of the Papal Authority in this Realm, transferred to the King by Statute; and therefore from that Time, the King's Confirmation was necessary; and a previous Licence is held to operate the same Thing as a subsequent Confirmation. And therefore since the Common Law still remains the same as to this Particular, notwithstanding the Statutes aforesaid; it seems the Bishop even now can by a Common Law Consolidation, where there is the same Reason for it, unite Parishes so as to make them one, not only in the Benefice, but also in the Church. But as to other Things which are not of an Ecclesiastical Nature, the Bishop having no Jurisdiction or Power over them, his Consolidations cannot reach unto them: and therefore as to the Constables, Overseers of the Poor, Surveyors of the Highways, and all other Matters which belong to the Civil Jurisdiction, the Parishes, notwithstanding the Bishop's Consolidation, must still remain distinct as they were before: unless they have been united also as to these by the Civil Jurisdiction, as well as they have been by the Ecclesiastical as to the other. Concerning Common Law Consolidations, see *Austin and Twine's Case*, Cro. El. 500, 501. *Moore* 408, & 601. 2 *Rol. Abr.* 178. See much of this Doctrine, *Reynoldson v. Blake and the Bishop of London*, 1 *Ld. Raym.* 192, &c.

4. But whether the Consolidation be made either by the Common Law or Statute Law, if it be in any City or Town corporate, it cannot be good since the said Statute of 37th of Hen. 8. c. 21. without the Consent of the Corporation; because that Statute says expressly, that all Unions and Consolida-
tions

tions within any City or Town corporate, without the Consent of the Mayor, Sheriffs and Commonalty of the said City, or without the Consent of the Bodies corporate of the said Town, in Writing under the Common Seal, shall be clearly void and of no Force or Effect; any Thing before expressed, or any Ordinance, Law, Custom or Statute to the contrary thereof in any wise notwithstanding. Which Clause being in such general Words, comprehending all Manner of Consolidations whatsoever, and with a Non-obstante to any other Law, Custom or Statute, must extend to all Common Law Consolidations, as well as Statute Law Consolidations in all such Cities and Towns corporate.

5. In the said Statute of 37 Hen. 8. c. 21. there is a Provision so that where the Inhabitants of any such Parish, or the major Part of them, within one Year after such Union, by their Writing sufficient in Law, shall assure the Incumbent there, and his Successors, so much Money yearly, which, together with the Value thereof in the King's Books, shall amount to eight Pounds; that then such Union shall be void, but not to extend to any Union made before that Statute.

6. The Statute of 37 Hen. 8. c. 21. requires that one of the Churches to be united, be not of above six Pounds yearly Value in the King's Books, and that they be not above one Mile distant the one from the other; and that the First Fruits and Tenths be paid by both according to their respective Valuations. Procurations and Pensions to continue as before.

7. In Union or Consolidation of Churches in Cities or Towns Corporate, and their Liberties, made by Virtue of the Statute of 17 Car. 2. c. 3. the Bishop may appoint in which Church the Parishioners shall meet, and which shall be united to the other; and the Parishioners shall pay all Tithes and other Duties to the Incumbent of the Church to which the other is united. Notwithstanding such Union, the Parishes are to continue distinct as to all Rates, Taxes, Parochial Rights, Charges, and Duties; and all Respects whatsoever, other than above-mentioned; and Churchwardens shall be appointed for each as before.

8. Where one or more of the said Churches are full at the Time of such Union, it shall take Effect at the next Avoidance after. The Patrons shall present by Turns to that which remains, in such Order as the Bishop, with the Consent of the Officers there, or the major Part of them, and of the Patrons, &c. shall decree, Respect being had to the Differences of the Maintenance.

9. No such Union shall be good in Law till it be registred in the Register-Book of the Bishop of the Diocese, nor where the Maintenance of the Church or Churches so united shall exceed 100*l.* per Ann. clear, unless the Parishioners or the

Proviso in Statute of 37 H. 8. c. 21.

One of the Churches must not be above 6*l.* per Ann. in the King's Books.

Consolidation made by the Statute 17 Car. 2. c. 3.

May be made when the Churches are both full.

Must be registred in the Bishop's Register.

major Part of them under their Hands desire otherwise. And the Incumbents of Churches so united must be Graduates in one of the Universities.

Impropriators may annex their Tithes without Mortmain.

Must not exceed 100*l.* per Ann.

The Union does not alter the Nature of the Advowsons.

Where a Prohibition lies.

10. Owners of Improvements, Tithes, &c. may annex the same to the Parsonage or Vicarage, where they lie, or settle them in Trust for the Curates where the Parsonage is impropriate, and no Vicarage endowed, without any Licence of Mortmain.

11. If the settled Maintenance of any Parsonages or Vicarages, Churches or Chapels so united, or of any other Parsonage or Vicarage with Cure, shall not amount to 100*l.* per Ann. clear, the Incumbent may purchase to him and his Successors, Land, &c. without Licence of Mortmain. 1 Cro. 500, 501. *Plowden* 499. *b.*

12. The Union makes no Alteration in the Advowsons, as if one be appendant and the other in Gros; and that which is appendant is made the Presentative Church, and the Patron of the Church in Gros hath the first Turn, yet shall not the whole Advowson be in Gros, but it shall remain appendant for his Turn who was Patron of the Advowson Appendant, and in Gros for his Turn who was Patron of the Advowson in Gros. *Dyer* 959. *b.* And a second Benefice may be taken by Dispensation, within the Statute of Pluralities, where an Incumbent hath already two Churches united. 1 Cro. 720.

13. Division of Churches is not to be allowed but by Act of Parliament.

14. Where two Churches were united by Virtue of the Statute of 37 Hen. 8. c. 21. upon the Suggestion that they were not distant above one Mile, and the Parishioners are sued in the Spiritual Court for not coming to Church, they may have a Prohibition upon a Surmise that the Churches were more than a Mile apart. 2 Rol. Abr. 293.

[C H A P. XXVIII.]

Of Sequestration.

Antiently Profits of vacant Benefices belonged to the Bishops, &c.

1. Antiently the Archbishops and Bishops were intitled to the Profits of vacant Benefices by Custom. And the King might take the Profits of the Deanery of a free Chapel, and the Patron of a Donative the Profits of it during the Time of Vacation. 2 Cro. 518. But by Statute 28 Hen. 8. c. 11. they belong to such Persons as shall be next thereunto

pre-

presented, promoted, instituted, inducted, or admitted, towards Payment of the First Fruits to the King. Institution only gives a Right to enter upon, and take the Profits as well of the Vacation as others, but the Incumbent cannot sue for them before Induction. And if those who shall receive the Profits of the Vacation, refuse to restore them to the next Incumbent, they shall forfeit the treble Value; one Half to the King, the other to the Incumbent. *Ibid.*

2. The ordinary Way of managing the Profits of a vacant Benefice is by Sequestration granted to the Churchwardens, or some neighbouring Clergymen (which seems much more proper and convenient) who are to account to the Successor for the Profits, retaining so much as will pay the Cure, during the Vacation, and the Charge of collecting. By the aforesaid Statute a reasonable Stipend or Salary is to be made out of the Profits for serving the Cure, of which the Ordinary is the most proper and competent Judge; and if the Successor finds himself aggrieved, he may be redressed by Appeal to the superior Ecclesiastical Courts; but the Reasonableness or Unreasonableness is also triable by Action at Law grounded upon this Statute. And if the Profits of the Vacation will not answer the Cure, the Incumbent is to pay it within fourteen Days after Possession. *Ibid.*

How the Profits of a vacant Benefice are managed. Part to be given to one to serve the Cure.

C H A P. XXIX.

Of Dilapidations.

1. **T**HE Ordinary hath a Right to take Cognizance of Dilapidations during the Life of the Incumbent, either by voluntary Inquisition, or upon Complaint made to him, and to enforce Reparation by the sequestring of Profits, or by Ecclesiastical Censures even to Deprivation. 3 *Bull.* 158. 3 *Inff.* 204.

2. Under Dilapidations are comprehended not only decayed or ruinous Building, but Hedges, Fences, Mounds, &c. in the like Condition. And the Felling of Wood and Timber, otherwise than for Repairs, or for Fuel, hath been adjudged to be Dilapidations from which the Incumbent may be restrained during his Incumbency, or he or his Executors sued after he ceases to be Incumbent. 2 *Bull.* 279. 3 *Bull.* 158. 1 *Rel. Rep.* 335.

3. There

What Share of the Profits are usually sequestered.

3. There is no certain Rule as to the Proportion of the Profits to be sequestered, but it is left to the Direction of the Ordinary, according as particular Occasions require. The general Practice is a fifth Part.

4. By Statute 13 *El. c. 10.* where there is a fraudulent Deed to defeat the Successor of Dilapidations, the Successor shall have the same Remedy against him to whom any such fraudulent Deed is made, as if he were Executor or Administrator, and the Statute in that Case seems to limit the Suit to the Dilapidations that have grown in the Time of the last Incumbent. But in other Cases the last Incumbent or his Executors are chargeable with the whole Dilapidations, in what Time soever they have grown.

Action lies at Law for Dilapidations.

5. Tho' the Ecclesiastical Courts take Cognizance of Dilapidations, yet an Action upon the Case for the same lies in the Temporal Courts. 1 *Lev. 268.* 3 *Lev. 413.*

In what Time Monies recovered for Dilapidations are to be laid out.

6. By Statute 14 *El. c. 11.* all Sums recovered for Dilapidations, by Sentence, Composition, or otherwise, shall be so employ'd within two Years after the Receipt thereof, on Pain of forfeiting to the King double as much as shall be so receiv'd, and not employ'd; and if the Incumbent dies within that Time, the Money shall be paid by his Executors to the Successor, and be laid out by him (not by the Executors) in Repairs.

The Method of taking out a Sequestration.

7. Upon any Vacancy of the Benefice, the Churchwardens are to apply to the Chancellor of the Diocese for a Sequestration; and having taken out an Instrument for it under the Seal of the Office, they are to manage all the Profits and Expences of the Benefice for the Benefit of the succeeding Parson, plow and sow the Glebe, gather in Tithes, thresh out and sell Corn, repair Houses, make up his Fences, pay his Tenths, Synodals and Procurations; and principally they are to take Care, that during the Vacancy the Church be well and duly served by such a Curate as the Bishop shall approve of, whom they are to pay out of the Profits of the Benefice. 2 *Co. Inst.* 89.

Ordinary to settle Curate's Proportion.

And it will be safest for them to get it stated by the Ordinary, when they take out the Sequestration, what they are to pay him weekly for the serving of the said Cure, for then there can be no Contention about it when they make up their Accounts. And this Trust in them continues till it be superseded by the Institution of a new Incumbent, unless in the Interim the Ordinary shall see just Cause to recall the said Sequestration, and grant it to others. And as the Ordinary on any such just Cause hath Power to grant the Sequestration, so also hath he in the first issuing of it out; and may then, if he see the Reason for it, put the said Trust into the Hands of other Men that are willing to accept of it. But the Churchwardens are the proper Officers for this Business, who are bound by Virtue of their

Ordinary may supersede the Sequestration, and grant it to others.

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Office to take it upon them whensoever enjoined. And therefore should they be backward to take out the Sequestration, or unwilling to meddle therewith, the Ordinary may cite them before him, and command them under the Penalty of Contumacy to take this Charge upon them, that so the Fruits of the Benefice be not lost, dissipated or imbeziled, during the Vacancy, for want of proper Trustees to take Care of them.

8. As soon as a new Incumbent is instituted, the Sepuestrators are to account to him for all the Profits of the Benefice, which they have received during the Vacancy; and if he be satisfied with their Account, and gives them a Discharge, this wholly concludes the Matter. But if he be dissatisfied in any Particulars, then he may bring them to account before the Ordinary, by whom all Things relating hereto are to be examined and decided.

9. And sometimes Livings are sequestred on other Occasions than Vacancies, for on a Suspension there must be a Sequestration for the serving of the Cure. And in Case of Dilapidations either in the Chancel or the Minister's House, a Sequestration is often necessary for repairing of them. And sometimes a Sequestration is commanded by the King's Writ for the Payment of the Minister's Debts; in which Sequestrations there must be the like Management, and the like Account given as above-said. And to oblige the Sequestrators the more hereto, the Ordinary usually binds them to it by a Bond; especially when the Profits sequestred amount to a considerable Value. Which Bond may be sued at Common Law, if the Sequestrators cannot otherwise be brought to give a true and faithful Account.

10. In all Sequestrations, the Sequestrators are to take Care that they meddle not with any Timber, Trees, Wood or Underwood, standing upon the Glebe, unless it be for necessary Repairs: Nor commit any other Waste upon the Benefice, 9 Hen. 6. c. 5. for if the Minister himself should sell any Timber to sell, or for any other Purpose, unless for the Repair of his House or Chancel, or should cut down any Wood, unless for the repairing of the Gates, Stiles, or Fences of the Premises, or for necessary Fuel in his Houses, he does thereby commit Waste upon his Living, and when that is wilfully committed 'tis a Dilapidation, and a just Cause of Deprivation. 11 Co. 41. 3 Inst. 204. 1 Rol. Rep. 86. And should the Sequestrators (who are Trustees to preserve the Living) commit any Waste, it would be much more criminal in them.

11. In Case of a Spoliation brought to try which of them is rightful Parson, 'tis usual for the Judge, at the Petition of either of them (setting forth that Opposition may be made in collecting the Profits) to decree that they shall be sequestred, and

If Churchwardens neglect or refuse the Sequestration, Ordinary may force them to it.

They must account to the new Incumbent.

Sometimes Sequestrators are granted when the Living is full.

Sequestrators must take Care not to commit Waste.

In Case of a Spoliation, a Sequestration issues.

Sequestrators must account to him who shall have the Right, &c.

How to proceed against Impropropriators for not repairing the Chancel.

Method of Sequestration on a Judgment.

But not where the Parson hath made a Lease of his Tithes.

Profits in Abeyance during the Vacancy.

and to order the Churchwardens to collect them, and this must be published in the Church; and they are to give Bond not only to collect them, but to keep the same for the Use of him who shall be found to have the Right, and to account to him. And the Judge usually appoints some Minister to supply the Cure in mean Time, and appoints the Sequestrators to allow a certain Reward to that Minister. And after the Suit is determined, the Sequestrators are to deliver the Profits which they have collected to him who hath the Right: And this they must do either in Specie, or the Value if sold. If they refuse, they may be compelled by the Ecclesiastical Court; and if they delay to come to account, the Judge may assign the Bond to the Party grieved with a Letter of Attorney to sue for the Penalty.

12. It hath been a Question, Whether the Tithes of an Impropropriator may be sequestred to repair the Chancel. 'Tis certain they might while they were in the Hands of the Monks; but being now made a Lay-Fee by Act of Parliament, the Spiritual Court hath no Jurisdiction over them; but the usual Course in such Cases is by Citation; and in Cases of Contumacy to proceed to Excommunication.

13. Sometimes a Benefice is sequestred by Virtue of some Process out of the Courts at *Westminster*. And this is where a Judgment is obtained against a Clergyman, and upon a *Fi. Fa.* directed to the Sheriff, to levy the Debt and Damages, he returns, that the Defendant is *Clericus beneficiatus non habens Laicum feodum in Balliva mea*; then another *Fi. Fa.* is directed to the Bishop, who thereupon issues forth a Sequestration under his Episcopal Seal, directed to the Churchwardens to levy the same *de bonis Ecclesiasticis*, and by Virtue thereof the Tithes shall be sequestred. But if the Parson had made a Lease of his Tithes before the *Fi. Fa.* came to the Hands of the Bishop, then he may return that *Nulla habet bona Ecclesiastica*. And this was the Case of *Picard* against the Bishop of *Ely*, who made such a Return, and it was allowed; though in Truth the Defendant had a Spiritual Living in that Diocese, but had let it before the Writ came to the Bishop. *Sid.* 276.

14. The Profits of the Church, during the Vacancy, are in Abeyance, and are therefore to be received by the Churchwardens, by the Appointment of the Bishop under the Seal of the Court: And this is to provide for the Cure during the Vacancy. But they cannot bring an Action in their own Name for the Tithes: Therefore the proper Remedy to recover them is by Libel in the Spiritual Court

C H A P. XXX.

Of the Duty of Churchwardens by several Statutes.

1. **W**E have hitherto treated of Churchwardens chiefly in their Ecclesiastical Capacity; we shall now consider them as Lay-Officers, having their Authority by several Acts of Parliament. For coming to Church, see Stat. 1 *El.* c. 2. 23 *El.* c. 6. 29 *El.* c. 6. 35 *El.* c. 1. 3 *Jac.* 1. c. 4. 13 *Et* 14 *Car.* 2. c. 4. And first by the Stat. 1 *El.* c. 2. every Person is to come to his Parish Church, or (upon Lett thereof) some other Church, every Sunday or Holyday, on Pain of the Censures of the Church, and likewise to forfeit twelve Pence, to be levied by the Churchwardens, for the Use of the Poor, by Way of Distress. And any Justice of Peace of the Division where the Offender liveth may send for him, the Neglect being proved by one Witness upon Oath; and if he cannot give a satisfactory Excuse, the Justice may direct a Warrant to the Churchwardens to levy that Penalty by Distress; and if that cannot be had, then to commit him. 3 *Jac.* 1. c. 4.

Every Body is bound to come to his Parish Church.

2. These Acts for coming to Church extend not now to Protestant Dissenters. But this is to be understood upon Supposal that such Dissenters have qualified themselves according to the Act of Toleration of 1 *W. & M.* c. 18. for if any shall, without qualifying themselves in that Manner, resort to any Assembly or Meeting for Divine Worship, dissenting from the Church of *England*, they can have no Benefit of the said Act of Toleration, but are liable to all the Pains and Penalties of Law, not only for being absent from Church, but also for being present at the said Dissenting Meetings, in the same Manner as if the said Act had never been made; and are by the Churchwardens to be presented for the same. So also if the said Assembly or Meeting shall be held in a House not legally registred and allowed for it, or if they shall there meet with the Doors locked, barred or bolted upon them, all that are present are excluded by the said Act from having a Benefit of it, and are liable to be prosecuted, and must be presented by the Churchwardens in order to it, in the same Manner as if the said Act of Toleration had never been made.

Protestant Dissenters duly qualified are exempted.

But not otherwise.

3. And it is here to be observed, that if any Dissenting Minister not being in Orders according to the Church of *England*, shall administer the Sacrament of the Lord's Supper in an unlicensed House, or without qualifying himself as the said Act of Toleration requires, he is not within the Benefit of the said

In what Case a Dissenting Teacher forfeits 100 l. &c.

said Act, and consequently is liable to the Penalty of 100*l.* Forfeiture for every Time he shall so administer the said Sacrament, by 13 & 14 *Car.* 2. c. 4.

Churchwardens to see that every one be have orderly at Church, &c.

4. The Churchwardens are also to see, that all who resort to the Church do, in Time of Divine Service and Sermon, behave themselves orderly, soberly and reverently; kneeling at the Prayers, standing at the Belief, bowing at the Name of JESUS, and sitting or standing quietly and attentively at the reading of the Scriptures, and the preaching of GOD's Word, &c. And that none walk, talk, or make any Noise in the Church, to disturb the Duty which is there performing. *Can.* 18 & 111. And that none sit there with their Hats on, or in any other indecent or irreverent Manner. 1 *El.* c. 2. And that none contend or quarrel about Place, or upon any other Occasion make any Broil or Brawling there. 5 & 6 *Ed.* 6. c. 4. And that no idle Person abide in the Church-porch or Church-yard, during Divine Service or Sermon, and that no excommunicated Person come into the Church, *Can.* 85. or any other Disturbance or indecent Behaviour be there permitted, and none depart out of the Church, unless in Case of Necessity, till the Service be fully ended. *Can.* 18. And if any Boys shall there behave themselves rudely and disorderly, or shall make any Noise or Disturbance, the Churchwardens may chastise them for it; and if any Person shall irreverently keep his Hat on, they may take off the same. *Hal v. Flanner*, 2 *Keble* 124. 1 *Saund.* 13. 1 *Sid.* 301, and for this or any other irreverent or disorderly Behaviour they may present them at the next Visitation, and also bring them before a Justice of Peace, and make them pay one Shilling for every Time they shall so offend; for there are three Offences mentioned in the Statute 1 *El.* c. 2. for which one Shilling is to be paid. 1st, For absenting from Church. 2d, For not abiding there till Divine Service and Sermon are ended. 3d, For not behaving orderly and soberly while there; and notwithstanding they have paid the said Mulct, they must also be presented for the same at the next Visitation.

And to see that the Lord's Day be duly observed, &c.

5. The Churchwardens are also to see that the Lord's Day be duly observed, for if any one shall do any wordly Work or Business on that Day (Works of Charity and Necessity only excepted) he forfeits five Shillings. If any shall then publickly cry or expose to Sale any Wares, they shall forfeit the said Wares. If any Carrier, Carter, Wainman, Carman, Drover, Horse-courser, Waggoner, Butcher, Higler, or their Servants, shall travel on the Lord's Day, every one of them for so offending shall forfeit twenty Shillings. If any Person shall on the Lord's Day use, employ, or travel with any Boat, Wherry, Barge or Lighter, unless upon extraordinary Occasions to be allowed by a Justice of the Peace; he shall forfeit five Shillings;

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lings; except such Wherries as are allowed to ply every Lord's Day between *Limehouse* and *Vaux-hall* on the *Thames*, by 11 & 12 *W. 3. c. 21.* and such Hackney-Coaches and Chairs as are allowed by Statute 9 *Ann. c. 23.* and 1 *G. 1. c. 1.* If any Butcher shall on the Lord's Day kill or sell any Victuals, he forfeits six Shillings and eight Pence. And if any then meet at Bullbaitings, Bearbaitings, Interludes, common Plays, or any other Sport or Pastime whatsoever; every one so offending shall forfeit three Shillings and four Pence. All which Forfeitures the said Churchwardens are by a Warrant from a Justice of the Peace or chief Magistrate of the Place, to levy on the Offenders by Distress and Sale of their Goods, and apply them to the Relief of the Poor of the Parish where the said Offences shall be committed; and where no Distress is to be had, to put the Offenders in the Stocks. 1 *Car. 1. c. 1.* 3 *Car. 1. c. 1.* 29 *Car. 2. c. 7.*

6. Churchwardens ought also frequently on the Lord's Day to visit Alehouses, Taverns, and other Publick Houses, both in Time of Divine Service, and also out of it; and if they find any tippling in the said Houses, they are to make them pay three Shillings and four Pence for the same, and the Master of the House ten Shillings for entertaining them, and also five Shillings more for using his Trade on the Lord's Day; and if it be in Time of Divine Service, they may make every one of them pay also one Shilling for being absent from Church; all which Forfeitures are to be levied and disposed of in the same Manner as the last above-mentioned. 1 *Jac. 1. c. 9.* 4 *Jac. 1. c. 5.* 1 *Car. 1. c. 14.* And they are also to be presented by the Churchwardens at the next Visitation.

Churchwardens ought to visit Publick Houses on Sundays.

7. They may also present the Minister, if he be not according to Law constantly resident in the Parish for doing his Duty, or in any other Respect he leads a disorderly and irregular Life. 21 *H. 8. c. 13.* *Can. 41, 45, 47.*

8. If any one shall either by Word or Deed unlawfully interrupt, disturb or abuse any Minister in any Church or Chapel while he is there performing his Duty, by the 2 & 3 *Ed. 6. c. 1.* he is to forfeit for the first Offence 10 *l.* or if that be not paid in six Weeks after Conviction, he is to suffer three Months Imprisonment; and for the second Offence he is to forfeit 20 *l.* or if that be not paid within six Weeks after Conviction, to suffer six Months Imprisonment; and for the third Offence he is to forfeit all his Goods and Chattels, and be imprisoned during Life. By 1 *M. c. 3.* he is to be committed to Gaol for three Months, and from thence till the next Quarter-Sessions, when he is to be released or to be continued in Prison as the Court shall see Cause. By 1 *El. c. 1.* he is to forfeit for the first Offence 100 Marks; and if it be not paid within six Weeks after Conviction, to suffer six Months Imprisonment;

Penalties of disturbing a Minister in Divine Service.

prisonment; and for the second Offence to forfeit 400 Marks, and if that be not paid within six Weeks after Conviction, to suffer Imprisonment for one whole Year; and for the third Offence to forfeit all his Goods and Chattels, and be imprisoned during Life. And by 1 *W. & M. c. 18.* every such Offender is to be bound with two Sureties before a Justice of Peace, and in Default be committed to Prison till the next Quarter-Sessions; and upon Conviction at the Sessions shall forfeit 20 *l. toties quoties.* And whenever such an Offence is committed, it is the Churchwardens Duty to see the Law executed upon the Offenders, and they have their Choice which of these Statutes they will prosecute them upon.

Churchwardens are to levy the Penalty on Swearers and Cursers, &c.

Penalty of absents from Church for a Month, &c.

9. Churchwardens are to levy the Penalty of one or two Shillings, respectively, or double, &c. on those who prophanely curse or swear, to be levied by Distress; if none, to be set in the Stocks, or if under Sixteen, to be whipped. By 6 & 7 *W. 3. c. 11.*

10. By a Stat. 23 *El. c. 6.* every one who absents from Church for a Month, forfeits 20 *l.* and if he be absents for twelve Months or more, 20 *l.* for every Month, and Forfeiture of two Parts in three of his or her Estate, and shall after Certificate thereof in Writing to the Court of *B. R.* by a Justice, or the Ordinary, be bound with two Sureties in 200 *l.* for Good Behaviour, and so continue 'till he conform, &c.

11. If any one come not to the Sacrament of the Lord's Supper once a Year, his or her Name and Surname must be presented, forty Shillings Reward to such as present them.

12. None shall speak or do any Thing in Contempt of the most Holy Sacrament, on Penalty upon his Conviction by the Oaths of two lawful Witnesses, to be bound over by three Justices (*Quorum unus*), &c. and prosecuted for the same. 1 *Ed. 6. cap. 1.*

Shoemakers selling Shoes on Sunday forfeit them, and 3 s. and 4 d. What the Stat. 29 Car. 2. does not extend to.

13. Shoemakers putting Boots or Shoes to Sale on a Sunday, forfeit three Shillings and four Pence, and the Goods. 1 *Jac. 1. c. 22.* Sale on a Sunday is not good. 12 *Ed. 4. c. 1.* The Statute 29 *Car. 2. c. 7.* does not extend to dressing Meat in Inns, Cooks Shops, or Victualling-houses; and every Person to be impeached on that Statute must be presented within ten Days after the Offence.

14. Constable for arresting (for Good Behaviour) on a Sunday in the Church-yard coming from Church, fined. 1 *Cro. 602. Prinzen's Case, Godbolt, Pl: 397.* Where one is assaulted and beaten in a Church, it is not lawful to return or give back any Blows in his own Defence, as he may do in another Place. That due Reverence and Attention may be had in the publick Worship, all Quarrelling is prohibited either in the Church or Church-yard; and if any one offend in such Case, the Ordinary upon Proof of the Fact, by two Witnesses,

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may suspend him *ab ingressu Ecclesiae*, and if a Clerk a *Ministerio Officii*. The Proceedings for quarrelling or brawling may be in the Spiritual Court *pro salute Animæ*, but not for any Damages; but the Party may have Costs there *pro expensis litis*.

2 Cro. 462. 4 Rep. 20. Striking or laying Hands on another there, the Offender shall be *ipso facto* excommunicated. 5 & 6 Ed. 6. c. 4. But if it is with a Weapon, or if it is only drawn for that Purpose, the Offender is to lose one of his Ears.

Now tho' the Words *ipso facto* take off the Formality of a Sentence of Excommunication, yet before he is excommunicated he must be convicted at Law, and that must be transmitted to the Ordinary. 1 Vent. 146. If a Man should be indicted on

this Statute, it must not be generally, but the Fact is not to be brought within the Letter of the Law, and therefore the Indictment must set forth with what Weapon the Person did strike; for it is not sufficient to alledge that *extraxit gladium*

against another, and *ipsum percussit*, but it must be according as the Statute is penned, viz. *Extraxit gladium ad percutiendum*, and that *malitiose percussit*; for to set forth generally, that he did strike, is not good. Cro. Car. 464. Cro. El. 231. 3 Leon.

88. Noy 171; To strike without a Weapon is Excommunication *ipso facto*, as hath been observed; to strike with a Weapon is the Loss of one Ear; therefore where a Commitment was made by Justices of Peace for disturbing a Minister *per apertum factum*, the Prisoner was discharged, because they

ought to set forth the particular Fact, as by pulling him by the Gown, using any chiding, quarrelling, or opprobrious Words. But for any indecent or irreverent Behaviour, the Party may be indicted at the Sessions.

15. And in order to protect those who come to Church, we have Laws to secure their Persons *eundo, morando, &c. redeundo*, to or from Divine Service; the Person offending may be excommunicated, and pay Costs in the Spiritual Court, or may be indicted and fined in the Temporal Courts, and bound to the Good Behaviour. But the Arrest is good in Law, unless upon a Sunday. 50 Edw. 3. c. 5. 1 Ric. 2. c. 15. But these Statutes relate only to Arrests in Civil Acts, and do not extend to an Arrest for a Breach of the Peace, which is at the Suit of the King.

16. By Stat. 6 Ann. c. 31. Churchwardens of every Parish within the Weekly Bills of Mortality must, at the Charge of their respective Parishes, fix upon the Pipes belonging to the Water-works, Stop-blocks, and Fire-cocks, and make a Mark on the Front of any House over-against them, to find them, where an Instrument is to be kept to open the Plug when any Fire happens. And in each Parish is to be kept a large Engine, and a Hand-Engine, and a Leather Pipe, and Socket of the Size as the Plug or Fire-cock, under the Penalty of 8 l.

I

to

The Laws against quarrelling in Church or Church-yard.

Cases of it.

None to be arrested going to or coming from Church, &c.

Churchwardens to provide Engines, &c. in Case of Fire.

to be levied by Warrant of two Justices, by Distress and Sale of the Goods of the Churchwardens; one Moiety to go to the Informer, and the other to the Poor. *Ibid.*

Rewards to those who bring in Engines to Fires, &c.

But not to be paid without the Direction of the Alderman of the Ward, &c.

Vestries may assess and raise the Sums requisite, &c.

The Churchwardens Duty about Briefs for Charity Money, &c.

The Time of receiving to be indorsed by Churchwardens, &c.

17. And by Statute 7 *Ann. c. 17.* the first Person who brings in a Parish Engine, or any other large Engine with a Socket, &c. when any Fire happens, shall be paid, as an Encouragement, 30*s.* the Person who brings in the second Parish Engine shall be paid 20*s.* the third 10*s.* and the Turn-cock, whose Water shall first come into the main Pipe, is to have 10*s.* paid by the Churchwardens, or the same shall be levied by Distress, &c. The Rewards to the Turn-cock and others shall not be paid without the Approbation and Direction of the Alderman of the Ward where the Fire happened, or of his Deputy, or two Common-Council Men of the same Ward. But the several Rewards shall be likewise paid to the Keeper of any other great Engine, who shall bring it in to help to extinguish the Fire, in good order and compleat, though it is not a Parish Engine. *Ibid.*

18. If the Vestries shall think it necessary to have more than one great Engine, or Hand-Engine, they may provide it at the Parish Charge, or by an Assessment to be made as by the former Act, and to be under the same Regulation. *Ibid.* The Vestries may rate and assess such Sums of Money as are necessary to defray the Charge of providing and maintaining the Engines, Stop-blocks and Fire-cocks, and other Implements and Materials, and for Payment of the said Rewards, which Rates being confirmed as the Poor Rates, may be levied in like Manner. *Ibid.*

19. By Statute 4 & 5 *Ann. c. 14.* all printed Copies of the King's Letters Patent, or Briefs, granted under the Great Seal of Great Britain, for the Collection of Charity Money, being first stamped according to the Direction of the said Act of Parliament with a proper Stamp made for that Purpose, and indorsed with the Name of one or more of the Commissioners or Trustees, are to be given out to such Undertakers as shall be appointed by the Persons concerned, or the major Part of them, to raise and collect the same, and are with all convenient Speed to be sent or delivered by them to the respective Churchwardens and Chapelwardens of the respective Churches or Chapels, and to the respective Teachers and Preachers of every separate Congregation, or to any Person who hath taught or preached in any Meeting of the People called Quakers, in the Counties and Places to be comprized in the said Letters Patent.

20. The said Churchwardens, Chapelwardens, Preachers and Teachers, and Quakers having taught as aforesaid, immediately after such Receipt, shall indorse the Time of his or their receiving the same, and set his or their Names thereto : and

An Indictment for Striking with a Weapon in a Church-yard.

15. Essex, to wit. **T**HE Jurors, &c. that J. O. of D. 6 El. 6. c. 4. the nineteenth Day of December in the Year of the Reign, &c. by Force and Arms at H. in the aforesaid County, in the Church-yard of the Parish Church of H. aforesaid, maliciously did draw his Dagger upon one R. N. of H. aforesaid, Yeoman, and with the aforesaid Dagger, the said R. N. then and there in the Church-yard aforesaid did strike, against the Peace of our said Sovereign Lord the King, and against the Form of the Statute in such Case made and provided.

C H A P. XXXII.

Of Overseers of the Poor.

1. **T**O succour the Distressed is a great and God-like Act, and to relieve the Poor is our Duty, both by the Laws of God and Man; and yet in no Kingdom or Nation, are the Poor in a more deplorable and scandalous Condition than in Great Britain; insomuch as they are often seen starving in the very Streets, tho' the Rich live no where in greater Plenty. But tho' this Nation languishes in nothing more than in the Miseries and Increase of our Poor, yet has there never been found any Method to prevent, or effectually to remedy that Evil.

The Poor no where in a more scandalous Condition than in England.

Yet no Remedy hitherto found for it.

2. 'Tis true, the Cries of the Poor have pierced the Ears and Breasts of some of the greatest and best Men in the Kingdom; my Lord *Hal* in particular, whose Memory will descend with Veneration and Blessings to latest Posterity, has taken the Pains to write a Treatise on Purpose on this Subject; and Sir *Josiah Child* has, in his Treatise of Trade, proposed Methods for the Relief of the Poor; and both of them agree in this, that the best Way to relieve the Poor, is to put that whole Affair under the sole Care and Management of an Incorporated Body of Gentlemen and others, who would make it their Business duly and truly to mind and superintend the same. In order to this, I have seen a Scheme, whereby it is proposed, that his Majesty should, pursuant to an Act of Parliam-

The best Way to put that Affair under the Management of a Corporation to be erected on Purpose.

ment

ment in that Behalf to be made, issue under the Great Seal, into each County of this Kingdom, his Letters Patent, thereby incorporating several Gentlemen and others, who should have under their sole Inspection and Management not only the Relieving all the Poor, but also the Mending of all the Roads and Highways in every County. And by this Scheme it does plainly appear, that in a few Years there would not be one poor Person who was able to work, who would want it; nor one bad Way capable of being made good; nor one Turnpike left in the whole Kingdom. And this without any greater Tax or Rate than what is actually raised for the Poor and Highways.

Formerly the Poor relieved by Religious Houses, &c.

3. Before the Reformation, there was no great Occasion for any Law on Account of the Poor, because in the early Ages of Christianity there seemed a pious Contention among the Faithful, who should first bring their Offering to the Church: And the Bishop, to whom the Charge of Souls was committed, was for that Reason thought the fittest Person to be intrusted with those Oblations; a fourth Part of which was allotted for the Relief of the Poor, as has been before observed.

4. And in after Ages, when several Monasteries and Religious Houses were founded and plentifully endowed, the Poor were there sufficiently relieved, till all those Houses were dissolved; out of which Ruins sprung up, in a few Years, a numerous increase of Poor, whose Miseries and Necessities produced the Statute of 43 *El. c. 2.* So that the Overseers of the Poor (of whose Office I am now to treat) owe their very Creation and Being to this Statute, which having nevertheless been found in many Respects deficient, hath from Time to Time produced several others to the same Intent; of all which I shall proceed to take Notice. But because the Office and Duty of the Overseers of the Poor is so blended and mixed with the Poor themselves, that they are inseparable, and that it is impracticable to treat of one without the other, I shall proceed to set forth the several Statutes now in Force, which concern the Poor, and after add, in alphabetical Order, what I have to say further concerning them.

Two Sorts of Poor.

Statutes about each Sort of them.

5. The Poor may be divided into two Sorts, *viz.* 1st, Those who are willing, but are not able to work. 2d, Those who are able, but not willing to work. The Statutes relating to the first Sort, are 43 *El. c. 2.* 1 *Jac. 1. c. 25.* 7 *Jac. 1. c. 3.* 3 *Car. 1. c. 4.* 13 & 14 *Car. 2. c. 12.* 1 *Jac. 2. c. 17.* 3 & 4 *W. & M. c. 11.* 8 & 9 *W. 3. c. 30.* 9 & 10 *W. 3. c. 11.* 2 *Ann. c. 6.* 4 & 5 *Ann. c. 19.* 12 *Ann. c. 18.* 5 *G. 1. c. 8.* 9 *G. 1. c. 7.* The Statutes relating to the second Sort, are 5 *El. c. 4.* 18 *El. c. 3.* 7 *Jac. 1. c. 3 & 4.* and 21 *Jac. 1. c. 27.* 3 *Car. 1. c. 4.* 13 & 14 *Car. 2. c. 24.* 10 & 11 *W. 3. c. 11.* 11 & 12 *W. 3. c. 18.* 1 *Ann.*

c. 13.

c. 13, 5 Ann. c. 32. 12 Ann. c. 23. 5 G. 1. c. 19. Of all which in their Order.

6. And first, by 43 El. c. 2. Churchwardens, and two, 43 El. c. 2. three, or four Inhabitants of a Parish, to be named in *Easter Week*, or within a Month after, under the Hand and Seal of two or more Justices (*Quor. unus*) shall be called Overseers of the Poor, and shall, with Consent of the said two Justices, take Care to set poor Children to work, and all other Persons not able to maintain themselves, by raising weekly by Taxation of every Inhabitant, Person, &c. a convenient Stock to work upon, and also Money for relieving the Aged and the Impotent, and for putting out Apprentices.

Overseers of the Poor appointed, and their Business, &c.

7. Overseers must meet once every Month in the Church, When to meet, on *Sunday* after Divine Service in the Afternoon (unless hindered by Sickness or other just Excuse, to be allowed by two Justices) to consider of the Poor's Wants, and must within four Days after their Year is expired, and other Overseers named, yield an Account to two Justices of Monies by them received, or rated and not received, and deliver over what remains to Overseers that succeed them. Forfeiture of twenty Shillings for not meeting as aforesaid, or being otherwise negligent in their Office. Where a Parish is not able to relieve themselves, two Justices (*Quorum 1.*) may tax other Parishes and Places, and the Hundred, if necessary: Quarter-Sessions may tax the County in Part, or in Whole, at their Discretions. Two Justices, on Refusal of Payment of the Rates assessed and allowed by two Justices, may grant a Warrant to the Officers to make Distress and Sale. For want of Distress, Commitment till paid, and they may send to the House of Correction those who will not work when appointed thereto. Two Justices (*Quorum 1.*) may commit Churchwardens and Overseers refusing to account, there to remain till they will. Churchwardens and Overseers may 1 Jac. 1. c. 25. put out, with the Assent of any two Justices (*Quorum 1.*) poor Children Apprentices, where they shall see convenient; Boys till the Age of twenty-four, Girls till twenty-one, or Time of Marriage. Officers may build (with Consent of the Lord of the Waste, on the Waste) Cottages for poor People, and may make Inmates, any Statute notwithstanding, at the Parish Charge. These Houses must be employed only for poor and impotent Persons, on Forfeitures contained in 31 El. c. 7. Persons aggrieved by Officers Assessment, may complain to Quarter-Sessions who shall take Order therein; Father, Grandfather, Mother, Grand-mother, and Children of Poor, who cannot work, to be assessed towards their Relief (if of sufficient Ability); Quarter-Sessions may take Order herein. Persons so rated by Justices, shall forfeit 20 s. for every Month they fail of Payment. Officers in Corporations have the Authority as Justices

Justices for the County. See the Method where a Parish extends itself into two Counties or Liberties. Justices not naming Overseers forfeit five Pounds. Justices Forfeiture to be levied by Quarter-Sessions. All Forfeitures in this Act for the Use of the Poor, to be levied by Churchwarden or Overseer, by Warrant from two Justices, &c. within their Limits, by Distress and Sale, or Imprisonment till paid.

At what Time
Parishes are to
be rated to-
wards Relief
of poor Priso-
ners, &c.

8. At *Easter* Sessions yearly, two Justices or more shall rate every Parish at a certain Sum to be paid weekly (not more than six Pence, nor less than a Halfpenny) towards Relief of poor Prisoners in *B. R.* Marshalsea, Hospitals and Alms-houses. Every Parish, one with another, to pay not above two Pence yearly; which Sum so taxed shall be assessed by the Parishioners within themselves; in Default, by the Churchwardens and Constables of every Parish. On Refusal to pay, one Justice may levy by Distress, or for Want may commit, &c. 20*s.* at the least shall be gathered out of every County for *B. R.* and Marshalsea, which Sum the Churchwardens shall collect and pay the High Constable quarterly, who must pay it to the Treasurer, and the Treasurer to the Lord Chief Justice. Surplusage of Money remaining in Stock of any County, by the major Part of the Justices to be bestowed for the Relief of poor Hospitals of that County, or those that lose by Fire or Water, and other charitable Purposes. Churchwardens neglecting their Duty forfeit 20*s.* and the High Constable 20*s.* to be levied by the Treasurer, and employed to charitable Uses comprized in this Act. Treasurer neglecting his Duty forfeits 3*l.* to be levied by any two Justices.

1 Jac. 1. c. 25.

9. By the Statute 1 Jac. 1. c. 25. all Persons to whom the Overseers of the Poor shall (according to the Statute of 43 *El.* c. 2.) bind any poor Children Apprentices, may take, receive and keep them as Apprentices.

7 Jac. 1. c. 3.
How Money
given to put
out poor Chil-
dren Appren-
tices is to be
employed, &c.

10. By Statute 7 Jac. 1. c. 3. Monies given to put poor Children Apprentices shall be employed in Corporate Towns, by the Corporations, and in other Places by the Parson or Vicar, together with the Constables, Churchwardens and Overseers of the Poor, or the most Part of them; who shall not forbear or refuse to employ the same accordingly, on Pain to forfeit five Marks each of them so making Default, to be divided betwixt the Poor of the Parish and the Prosecutor. But the Justices cannot order a Sum for putting out a Bastard-Child an Apprentice. *Comber.* 448.

11. The Party receiving Money with such an Apprentice must give good Security, by Obligation, to repay it at the End of seven Years next ensuing the Date of the said Obligation, or within three Months next after the End of the said seven Years; and if such Apprentice shall die within the seven
Years,

Years, then within one Year after his or her Death; and if the Master, Mistress or Dame happen to die within the seven Years, then within one Year after their Death, so as the Money may be employed in placing the Apprentice with some other of the same Trade, to serve out his Time at the Discretion of the Parties trusted as aforesaid. The Money so given is to be employed within three Months after the Receipt thereof; and if there shall not be apt Persons found to be Apprentices in the Place or Places where it is given, it shall be employed in the Parish next adjoining, by the Parties that are trusted with it in the Places where it was so given, and there also Bond shall be taken as is before declared.

12. The Choice of Apprentices shall be out of the poorest Sort of Children, whose Parents are least able to relieve them, and no such Apprentice shall be above the Age of fifteen Years when he or she is first bound.

13. The Parties so trusted shall yearly in *Easter Week*, or within one Month after, account before two or more of the next Justices of the Peace; and if there be any Oblations or Money remaining in their Hands, they shall upon such Account (or within ten Days after) deliver the same to their Successors.

14. If any Officer so trusted shall break the Trust reposed in him, misemploy the said Money, or do any Thing contrary to the Act, for which he cannot be punished by this Act, the Lord Chancellor or Keeper shall, upon the Petition of any Person, award a Commission to such as he shall think fit, to inquire, hear and determine such Offences. And if the Commissioners shall find Money so misemployed, they shall, in Places not Corporate, have Power to rate, raise and collect it upon the Parties so offending, or otherwise upon the able Inhabitants of the City, Town or Parish so in Default, as the said Commissioners, or the greatest Part of them, shall think fit; and shall return the said Commission, together with the Manner of executing the same, into the Chancery, within three Months next after such Execution thereof.

On Breach of Trust, Lord Chancellor to issue Commission, &c.

15. By Statute 7 Jac. 1. Part whereof is not repealed, there shall be an House of Correction provided in every Shire to set Rogues and idle People to work.

16. The Justices in Session shall, from Time to Time, appoint a Governor for the said House, who shall have Power to set such Rogues and idle People to work, and to punish them by moderate Whipping, or putting Fetters or Givings on them; which Rogues and idle Persons shall not be chargeable to the County, nor have any other Allowance than what they shall deserve by their own Labour.

17. The Governors of the Houses of Correction shall have such a Sum of Money yearly, as shall be thought fit by the most Part of the Justices of Peace in the Sessions; the same to be paid quarterly before-hand by the Treasurers of the County, the Governors giving Security for their Continuance in the said Service.

18. If the said Governors shall not every Quarter-Sessions yield to the said Justices a true Account of all such Persons as shall be committed to their Custody, or if they suffer any within their Charge to escape, or to be troublesome to the County by going abroad, or otherwise, they shall incur what Fine the Justices in Session shall impose on them. The Fines to be paid to the Treasurers of the County, and by them to be accounted for.

19. If any lewd Woman have a Bastard which may be chargeable to the Parish, the Justices of Peace shall commit her to the House of Correction, there to be punished and set to work one whole Year; and if she offend again, then she is to be committed again, there to remain till she put in good Sureties for the good Behaviour, and not to offend so again.

20. Persons running away and leaving their Charge to the Parish, shall be deemed and punished as incorrigible Rogues; and those that threaten so to do (it being proved by two Witnesses upon Oath before two Justices of Peace of the same Division) shall be by the same Justices sent to the House of Correction, there to be punished as sturdy Rogues, (unless they put in sufficient Sureties to discharge the Town) and not to be delivered, but at such a Meeting as aforesaid, or in open Sessions.

3 Car. 1. c. 4.
Overseers of
Poor may set
up any Trade,
&c.

21. By the Statute 3 Car. 1. c. 4. the aforesaid Statute of 2 Jac. 1. c. 25. is again continued and confirmed. And Churchwardens and Overseers of the Poor, may, with Consent of two Justices, (*Quorum* 1.) where there are two, if not, with the Assent of one Justice, set up, use and occupy any Trade, Mystery or Occupation, only for setting to Work, and better Relief of their Parish.

13 & 14 Car. 2.
c. 12.

22. By Statute 13 & 14 Car. 2. c. 12. Churchwardens and Overseers of the Poor complaining to one Justice within forty Days after any Persons coming into their Parish, to settle in any Tenement under 10 *l.* a Year, may have such Persons removed (if likely to be chargeable) by two Justices (*Quorum* 1.) of the Division, &c. to such Parish where they were last legally settled, either as a Native, Householder, Sojourner, Apprentice, or Servant, for the Space of forty Days at the least, unless they give Security for the Indemnity of the said Parish to be allowed by two Justices. Persons aggrieved may appeal to Quarter-Sessions. Persons carrying

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with them a Certificate from the Minister, one Churchwarden, and Overseer, of having a Dwelling-House in their Parish, and their being Inhabitants there, may go into any other Place to work. And in such Case, if the Persons do not return again to their Habitations when their Work is done, or if they fall sick while they are at Work, it shall not be deemed a Settlement, but may be removed by two Justices to their legal Place of Abode. Persons refusing to go, or returning again, may be sent by one Justice to the House of Correction, and punished as Vagabonds. Churchwardens, &c. refusing to receive such Persons, and to provide for them, one Justice may bind over such Officers, for Contempt, to Quarter-Sessions or Assizes. See the Act in Respect to Corporations for erecting Work-houses in *London* and *Westminster*, &c. and all other Corporations, and about the Government of them. See also the Clause whereby Townships in *Lancashire*, *Cheshire*, *Derbyshire*, *Yorkshire*, *Northumberland*, *Durham*, *Cumberland* and *Westmoreland*, and other Counties, may provide for their Poor as Parishes do. This Statute is made perpetual by 12 Ann. c. 18. except what relates to Corporations therein mentioned, to which the Act 22 & 23 Car. 2. c. 18. relating, and being expired, is not here treated of.

23. In the same Act there is a Clause enacting, That Justices of Peace in their Quarter-Sessions may cause to be transported Rogues, &c. duly convicted and adjudged incorrigible, to the *English* Plantations beyond Sea.

24. By Statute 1 Jac. 2. c. 17. confirmed and explained, and a Clause added, that the forty Days were to be accounted from the Time of the Delivery of Notice in Writing, by the poor Person, of the House of his Abode, and the Number of his Family, if any, to one of the Churchwardens or Overseers, &c.

25. By 3 & 4 W. & M. c. 11. forty Days Continuance in a Parish to make a Settlement, shall be from Publication of Notice in Writing, which he or she shall deliver of the House of Abode, and Number of Family, if any, to the Churchwardens and Overseers of the Poor; which Notice the said Churchwarden, &c. if required, is to read or cause to be read publicly, immediately after Divine Service in the Parish Church, the first Lord's Day; the said Notice to be registred in the Poor's Account-Book, by the Officer aforesaid. No Soldier, &c. or Workman employed in his Majesty's Service shall have a Settlement as aforesaid, unless dismissed from his Majesty's Service; 40 s. Penalty for the Officer aforesaid refusing or neglecting to read such Notice, Conviction by two Witnesses on Oath before one Justice, to the Use of the Party grieved; for Want of Distress, Commitment for a Month, without Bail; Officers aforesaid neglecting to register Notice, forfeit on Conviction,

Persons executing a Parish Office, thereby gain a Settlement.

Conviction, as before, 40 s. to the Use of the Poor, to be levied as before, and committed as before. Persons executing any publick annual Charge in a Parish during one whole Year, or who shall be charged with, and pay his Share towards the publick Taxes or Levies of the Parish, shall be deemed to have a legal Settlement there, though no Notice in Writing is delivered, or, &c. Any unmarried Person not having a Child, &c. that shall be lawfully hired into any Parish for one Year, shall also make a Settlement without Notice. Being bound Apprentice by Indenture, and inhabiting in any Town, &c. such Binding and Inhabitation shall be a good Settlement without Notice. But *N.B.* This is altered by a Statute made 12 *Ann. c. 18.* which see below. Persons aggrieved may appeal to Quarter-Sessions, who may finally determine.

Parish Officers refusing to receive Poor sent by two Justices, forfeit 5 l.

26. Churchwardens, &c. refusing to receive any Person sent by Order of two Justices, forfeit 5 l. to the Poor of the Parish from which the said Person is removed; Proof by two Witnesses on Oath before any Justice of the County, &c. by Distress and Sale; for Want, to be committed for forty Days without Bail, &c. A Book shall be kept in every Parish wherein the Names of all those that receive Collection shall be registred with the Day and Year when first admitted to have Relief.

Parishioners must yearly make new Lists, &c.

27. Parishioners in *Easter Week* yearly, or oftner, if necessary, must meet in the Vestry, and make new Lists for the Poor, and none but those in the List allowed to receive Alms, but by Authority under the Hand of one Justice residing in such Parish, if any, or else near adjoining, or by Order of Sessions, except in Cases of Plague and pestilential Diseases, &c. Parishioners, except Alms-men, may be Evidence against Churchwardens, &c. of their mispending the Poor's Money.

8 & 9 W. 3. c. 30. Poor coming with a Certificate, &c.

28. By Statute 8 & 9 W. 3. c. 30. Persons coming to any Parish to inhabit, shall at the same Time bring a Certificate to the Churchwardens or Overseers of the Poor of the Parish, where such Persons shall come to inhabit, under the Hands and Seals of the Churchwardens, &c. of any other Parish, or the major Part of them, or of Overseers only, if there are no Churchwardens, to be attested by two Witnesses, thereby owning and acknowledging the said Person mentioned in the Certificate to be an Inhabitant legally settled in that Parish, &c. Every Certificate being subscribed and allowed by two Justices, shall oblige the Parish to receive and provide for the Person mentioned in the Certificate, together with the Family as Inhabitants of that Family, whenever they shall become chargeable to, or forced to ask Relief of that Parish, &c. to which such Certificate was given, and then, and not before, it shall be lawful for any such Person and his or her Children,

Children, though born in the Parish, (not having otherwise acquired a legal Settlement there) to be removed to the Parish, &c. from whence such Certificate was brought. Persons receiving Alms shall wear a Badge publickly on the right Shoulder-Sleeve, with Wife and Children (such Child only excepted, as shall be by Officers of the Poor permitted to live at home, in order to take Care of an impotent Parent); Persons refusing, &c. shall on Complaint to one Justice have their Relief suspended, abridged, or withdrawn, or may be sent to the House of Correction, for not more than one and twenty Days, to be whipped and kept to hard Labour. Churchwarden or Overseer relieving any Person not having and wearing a Badge, being convicted on Oath of one Witness before one Justice, shall forfeit 20 s. by Distress, &c. by Warrant from one Justice, to the Poor and Informer. Justices at Quarter-Sessions on Appeal to them about Settlement of any poor Person, or on Notice of Appeal, &c. tho' such Appeal is not prosecuted, shall award Costs for whom Appeal is determined, or to whom such Notice did appear to have been given. Proof must be made of Notice to Persons ordered to pay Costs living out of the Jurisdiction, &c. A Justice of the County where such Person inhabits, on Request to him made, with a Copy of the Order and Costs produced, shall cause Money to be levied by Distress, &c. for Want, Commitment for twenty Days.

Badge.

Justices to award Costs on an Appeal, &c.

29. Persons not having Child or Children shall not gain a Settlement in any Parish, unless they shall continue in a Service the Space of one whole Year. Persons refusing to take Apprentices put to them, by 43 *El. c. 2.* forfeit 10 *l.* to be levied by Distress and Sale of Goods, by Order of two Justices.

30. By Statute 9 & 10 *W. 3. c. 11.* no Person whatsoever, who shall come into any Parish by Certificate, shall by any Act whatsoever be adjudged to have procured a legal Settlement in such Parish, unless he shall really, and *bona fide*, take a Lease of a Tenement of the yearly Value of 10 *l.* or shall execute some annual Office in such Parish, being legally placed in such Parish. Appeal against an Order for Removal to be determined at Quarter-Sessions, and not elsewhere: Proviso for Justices for the Liberty of *St. Alban's*.

9 & 10 W. 3. c. 11. Certificate.

Removal.

31. By Statute 9 *G. 1. c. 7.* no Justice of the Peace shall order Relief to any poor Person, before Oath be made before such Justice of reasonable Cause, and that the Person had applied to the Parishioners at some Vestry or publick Meeting, or to two of the Overseers of the Poor of the Parish, and was by them refused to be relieved, and until the Justice hath summoned the Overseers to shew Cause why Relief should not be given, and the Person so summoned be heard, or hath made Default in not appearing.

9 G. 1. c. 7. No Justice to order Relief till after Application made to the Vestry, &c.

Poor are to be
registred in
Parish Book.

32. Persons ordered by Justices to be relieved, are to be registred in the Parish Books, as those who are to receive Collection, as long as the Cause for Relief continues, and no longer; and no Officer of any Parish (except upon emergent Occasions) shall bring to the Parish Account any Money he shall give to the Poor not registred, on Pain of forfeiting 5 *l.* leviable by Distress by the Warrant of two Justices, for the Use of the Poor of the Parish, at the Direction of the said Justices.

Parish Officers
may purchase
or hire Houses,
&c. and keep
the Poor there-
in.

33. Churchwardens and Overseers of the Poor of any Parish, with the Consent of the major Part of the Inhabitants, may purchase or hire any House or Houses in the Parish or Place, and contract with Persons for the lodging, keeping or employing of the Poor; and there they are to keep them, and take the Benefit of their Work and Labour for the better Maintenance and Relief of such Persons. And in Case any Poor shall refuse to be lodged, kept or maintained in such House or Houses, he shall be struck out of the Parish Books, and not be intitled to Relief.

34. Where Parishes are small, two or more of such Parishes, with the Approbation of a Justice of Peace, may unite in purchasing or hiring Houses for the Purposes aforesaid. And Churchwardens, &c. of one Parish, with the Consent of the major Part of the Parishioners, may contract with the Churchwardens, &c. of any other Parish for the Lodging and Maintenance of the Poor.

35. But no Poor, or their Apprentices, Children, &c. shall gain a Settlement in the Parish, Town or Place, to which they shall be removed by Virtue of this Act.

No Person
gains a Settle-
ment by a Pur-
chase under
30 *l.*

36. No Person shall gain a Settlement in a Parish by Virtue of any Purchase therein, for which the Consideration doth not amount *bona fide* to 30 *l.* for any longer Time than such Person shall inhabit in the Estate purchased, and then shall be liable to be removed to the Place where last legally settled.

Nor by paying
to the High-
ways, &c.

37. Persons taxed to and duly paying the Rates to the Scavengers, or to the Highways, shall not thereby gain any legal Settlement in any Town or Parish.

No Appeals to
be proceeded
upon before
Notice, &c.

38. No Appeal from any Order for Removal of any Poor shall be proceeded upon at the Quarter-Sessions, unless reasonable Notice be given by the Churchwardens or Overseers of the Poor of the Parish, making the Appeal to the Churchwardens, &c. of the Parish from which such poor Person shall be removed; and if reasonable Time of Notice be not given, the Justices may adjourn the Appeal to the next Quarter-Sessions.

And to order
the Appellants
their Charges,
&c.

39. If the Justices at the Quarter-Sessions upon Appeal shall determine in favour of the Appellant, they are to order the Appellant to much Money as shall be reasonably expended by the Parish, on whose Behalf the Appeal was made, for the Relief

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Relief of the poor Person, between the Time of undue Removal, and the Determination of the Appeal; to be recovered in like Manner as Costs and Charges upon Appeal are by 8 & 9 W. 3. c. 30.

40. This is a short Abstract of all the Laws now in Being relating to the first Sort of Poor, *viz.* Those who are willing but not able to work. We shall proceed to those Laws now in Being, which relate to the second Sort, *viz.* Those who are able, but are not willing to work; and shall begin with 5 Eliz. c. 4. by which it is enacted, That two Justices may warn all single Persons, under the Age of thirty Years, to go to Service at a Time they shall limit; and any Woman above the Age of twelve Years, and under forty, being unmarried, may, by two Justices, be compelled to go to Service; and if they refuse so to do, and continue to live idly, having no visible Estate or a lawful Way to maintain themselves, they may be sent to the House of Correction, or bound over to the Sessions; and being so retained shall not depart from their Service without one Quarter's Warning before two lawful Witnesses, or some lawful Cause, to be proved before one Justice of Peace or Head Officer, on Pain of Imprisonment without Bail, by two Justices.

5 El. c. 4.
What Persons
may be obliged
to go to Service
by two Ju-
stices, &c.

41. None shall put away his Servant before the End of his Term without a Quarter's Warning; nor no Servant, having served in one City or Town, shall go to serve in another without a Testimonial; and the Servant that brings not such a Testimonial, shall be imprisoned till he procure one: And if he do not procure one within one and twenty Days after his Imprisonment, or shew a false one, he shall be whipped as a Vagabond; and the Master that retains a Servant without such a Testimonial shall forfeit 5 l.

42. Those that work by the Day or Week shall continue at work betwixt the Middle of *March* and the Middle of *September*, from Five in the Morning till between Seven and Eight at Night, except two Hours allowed for Breakfast, Dinner and Drinking, and Half an Hour for sleeping from the Midst of *May* to the Middle of *August*; and all the rest of the Year from Twilight to Twilight, except an Hour and Half allowed for Breakfast and Dinner, on Pain to have one Penny defalked out of their Wages for every Hour's Absence.

What Hours
Labourers are
obliged to
work, &c.

43. None that take Work by the Great shall leave the same before it be quite finished, except for Nonpayment of his Wages, or other lawful Cause, on Pain of one Month's Imprisonment without Bail, and to forfeit 5 l. to the Party grieved, besides his Costs and Damages to be recovered at Common Law.

And shall not
leave their
Work before
finished.

44. None retained in Service to work shall depart without Licence, on Pain of a Month's Imprisonment.

Punishment of
Servants af-
faulting Master
or Mistress,
&c.

45. If any Servant or other shall be convicted before two Justices of Peace or a chief Officer, by his own Confession, or the Oath of two Witnesses, to have assaulted his Master, Mistress, Dame or Overseer, he shall be imprisoned for one Year, or less, if the Justice or chief Officer shall think fit; and if the Party shall be thought to deserve a more severe Punishment, then to receive such open Punishment (Life and Member excepted) as the Justices in Sessions, or chief Officer and four of the discreetest Men in the Corporation shall think convenient.

46. Artificers shall work in Hay-Time and Harvest, on Pain of being set in the Stocks two Days and one Night by the Constable, or he forfeits 40 s.

And of one re-
fusing to be
bound Appren-
tice.

47. If any Person fit to be an Apprentice refuse to serve upon Demand, one Justice of Peace, Mayor or head Officer, unto whom Complaint shall be made, hath Power to commit him to Gaol, till he be willing to serve accordingly. But none shall be bound to enter into an Apprenticeship, other than such as be under the Age of one and twenty Years.

48. If there shall arise any Difference between the Master and the Apprentice, one Justice of Peace in the County, or Mayor, or head Officer in a Corporation or Market-Town, shall have Power to reconcile it, if they can; if not, then to bind over the Master to the next Quarter-Session, where the Justices of Peace or any four of them, (*Quorum* 1.) or the head Officer, with the Consent of three of his Brethren, shall, upon Default found in the Master, in Writing under their Hands and Seals, have Power to discharge the Apprentice of his Service; and if Default be found in the Apprentice, then to inflict such Punishment upon him as in their Discretions shall be thought fit.

Remedy when
an Apprentice
runs into an-
other County.

49. When an Apprentice departs from his Master's Service into another County or Corporation, it shall be lawful for the Justice of Peace, or head Officer, being a Justice of Peace, to direct a *Capias* to the Sheriff or other chief Officer, for his Apprehension; and being taken, the said Justice of Peace or chief Officer shall commit him to Gaol, till he give good Security that he will honestly serve out his Time.

18 El. c. 3.

Two next Ju-
stices may take
Order about a
Bastard Child,
&c.

50. By Statute 18 *El. c. 3.* the two next Justices (*Quorum* 1.) may take Order as well for the Punishment of the Mother and reputed Father of a Bastard Child, as also for the Relief of that Parish where it is born, by charging the said Mother and Father with the Sustentation thereof, by Payment of Money weekly or otherwise. If two Justices adjudge *A.* to be the Father of a Bastard, if the Child is a Bastard, *A.* is concluded by the Judgment of the Justices, and cannot falsify it, and say that he is not the Father, his only Remedy is by Appeal; but if the Child was born in Wedlock, then the Judgment was

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coram non Judice, and void; and consequently no Person concluded by it. 1 *Ld. Raym.* 471.

51. If the Mother and Father perform not the Justices Order therein, they shall be imprisoned without Bail, except he, she or they give Security to perform it, or else to appear at the next Quarter-Sessions, and also to abide the Order of the greater Part of the Justices there, if any shall be there made; if not, then to perform that made by the two Justices.

52. By Statute 7 *Jac.* 1. c. 4. Justices of the Peace shall commit to the House of Correction lewd Women which have Bastards that may be chargeable to the Parish, there to be punished and set to work one whole Year; and if they offend again, they shall not be enlarged without giving good Security to offend no more.

53. By Statute 21 *Jac.* 1. c. 27. It shall be Murder for a Mother to conceal the Death of her Bastard-Child, unless she can prove by one Witness at least, that it was still born.

54. By a Stat. 3 *Car.* 1. c. 4. all Justices of Peace within their several Limits and Sessions, may do and execute all Things concerning that Part of 18 *El.* c. 3. which concerns Bastards, that by the Justices of Peace in the several Counties are by the said Statute limited to be done.

55. By Statute 13 & 14 *Car.* 2. c. 12. Constables, Headboroughs and Tithingmen, out of Purse for conveying Vagabonds, &c. to Houses of Correction or Workhouses, they, the Churchwardens and Overseers of the Poor, and other Inhabitants of the Parish, may tax all chargeable by 43 *El.* c. 2. which Rate being confirmed under the Hand and Seal by two Justices of Peace, the said Constables, &c. by Warrant under the Hand and Seal of two Justices, may levy it by Distress and Sale of Goods; made perpetual by Stat. 12 *Ann.* c. 18.

56. Churchwardens and Overseers of the Poor where any Bastard-Child is born, may seize so much of the Goods and Profits of the Lands of the putative Father and lewd Mother as two Justices of the Peace shall order, towards Discharge of the Parish, to be confirmed at the Sessions, who may make an Order for the Churchwardens, &c. to dispose of the Goods by Sale or otherwise, as they shall think fit, and receive the Profits of so much of their Lands as shall be ordered by the Sessions.

57. Persons sued for what they do in Execution of this Act, may plead the General Issue, and give the special Matter in Evidence, and shall have treble Costs if the Verdict be for them, or the Plaintiff be nonsuit, or discontinue.

58. By Stat. 10 & 11 *W.* 3. c. 11. all Officers or Soldiers who have been in his Majesty's Service, and have not since deserted, that heretofore used, or were Apprentices to or are able to practise any Trade, may set up such Trade, Mystery

7 *Jac.* 1. c. 4.
And commit the Mother to the House of Correction.

21 *Jac.* 1. c. 27.
Murder for the Mother to conceal the Death of a Bastard, &c.

3 *Car.* 1 c. 4.
Quarter-Sessions may do what two Justices can.

13 & 14 *Car.* 2. c. 12. How Constables, &c. are to reimburse themselves their Charges in passing Vagrants, &c.

Parish Officers may seize the Effects of Parents of Bastards, &c.

10 & 11 *W.* 3. c. 11. Soldiers dismissed the Service may set up Trades, &c.

or Occupation, or any other about Manufactures, viz. such as have been Apprentices, may set up such Trade as fully as if they had served out their Times; and all others may set up such Trades as they are fit for, in any Town or Place where they were born; and if any such Officer or Soldier be sued for the same, upon making it appear to the Court where they are sued, that they have so served the King, they shall be found not guilty; and if the Prosecutors have a Verdict against them, or be nonsuit or discontinue, they shall pay to such Officers or Soldiers treble Costs.

What Proof they must bring of their having been in the Service.

59. The Proof of such Service shall be by Certificate under the Hand and Seal of some Field-Officer, or two Commission-Officers of the Regiment wherein the Person served, or some General Officer of the Army, or by the Oath of two credible Witnesses.

60. Persons producing a false Certificate, and thereof convicted, shall suffer three Months Imprisonment, and lose the Benefit of this Act.

A Man may become impotent by the Charge of his Children. *Comb.* 321.

C H A P. XXXIII.

Of Vagrants or Vagabonds.

Of the constant Growth and Supply of Vagabonds, &c. in England.

1. **B**Efore the Statute 12 *Ann.* c. 23. there were many Acts of Parliament made for relieving the Publick from the great Inconvenience occasioned by idle People, who having, or using no honest Means of Livelihood, wander abroad, and by begging, or other blameable Practices, live upon the mistaken Charity, or Unwariness of others. These (instead of affording a constant Supply to the Gallows, and for Transportation to our *American Colonies*) might be made useful to themselves and their Country at home, if only a reasonable Degree of Vigilance in our Magistrates in the Counties, Cities, and Boroughs, and of the Parish Officers in their several Districts, was exerted in Execution of the Laws. The great Increase of this Sort of People has been made apparent within the last seven Years, before this Sixth Edition of this Book, *Anno* 1746. When (although many Thousands of able-bodied Land-men entred voluntarily, or were pressed on Board his Majesty's Fleet) there has been a Recruit or Augmentation of the Land-Forces to the Amount of Sixty thousand Men,

Men, or upwards: And although it may be very true, that many have been induced to enlist, through the Deadness of Trade in the Time of War, and Scarcity of Provisions, yet the Gentlemen who bear Commissions in the Foot-Service, will be found to concur in the general Character of their Recruits, viz. That they are scarcely good for any Thing else; that they abhor Industry, and not many of them ever got their Bread in their Countries regularly and constantly by their Labour. We have, as is said, often endeavoured to cure the Body Politick of this Evil, an Evil in some Degree owing to Liberty, and better endured than cured by destroying or impairing that Cause of it. But it being found by Experience that all former Laws were ineffectual, the Stat. 12 Ann. c. 23. was made to reduce them all into one Act, and to repeal several of the former Laws therein mentioned. This Statute after the Experience of five and twenty Years, being also found ineffectual, in the 13th of his present Majesty, another Act hath been made, which (by the last Clause of it) repeals that of 12 Ann. but enacts, that all the Acts therein mentioned to be repealed, are declared to be, and continue repealed. This was Stat. 13 Geo. 2. c. 24. intituled, *An Act for amending and enforcing the Laws relating to Rogues, Vagabonds, and other idle and disorderly Persons, and for reducing the same into one Act of Parliament; and also for amending the Laws for erecting, providing and regulating Houses of Correction.* But this Act having been also thought defective in several Parts of it, hath been since repealed by Stat. 17 Geo. 2. c. 5. intituled, *An Act to amend and make more effectual the Laws relating to Rogues, Vagabonds, and other idle and disorderly Persons, and to Houses of Correction.*

2. This Act (17 Geo. 2. c. 5.) recites, that the Number of Rogues, Vagabonds, Beggars, and other idle and disorderly Persons, daily increases to the great Scandal, Loss and Annoyance of the Kingdom; and then it enacts, that Persons who threaten to run away, and leave their Wives or Children to the Parish; and all Persons who unlawfully return to the Parish or Place from whence they have been legally removed by Order of two Justices of the Peace, without bringing a Certificate from the Parish, &c. whereunto they belong; and Persons, who not having wherewith to maintain themselves, live idle without Employment, and refuse to work for the usual and common Wages given to other Labourers in the like Work in the Parish, &c. where they then are; and Persons going about from Door to Door, or placing themselves in Streets, Highways, or Passages, to beg or gather Alms in the Parishes, &c. where they dwell, shall be deemed idle and disorderly Persons; and being convicted before one Justice by his own View, or by their own Confession, or Oath of one

Stat. 12 Ann.
ch. 23. ineffectual.

Stat. 17 G. 2.
c. 5.

Idle and disorderly Persons described.

Conviction by one Justice.

credible

Punishment.

credible Witness, he may commit them to the House of Correction, there to be kept to hard Labour for any Time not exceeding one Month.

Any Person may apprehend such as in Sect. 2.

Resisting or escaping to be punished as Rogues, &c.

5 s. to Person apprehending.

How levied.

Rogues and Vagabonds described.

3. Any Person may apprehend and carry before a Justice, any such Persons going about from Door to Door, or placing themselves in Streets, &c. And if they resist or escape from the Person apprehending them, they shall be subject to the same Punishment as Rogues and Vagabonds are made liable to by this Act. And the Justice, by Warrant under Hand and Seal, may order any Overseer of the Poor of the Parish, &c. where such Offender was apprehended, to pay the Sum of five Shillings to the Persons in any such Parish or Place so apprehending them, for every Offender so apprehended. And it shall be allowed him in his Account, producing the Justice's Order, and a Receipt under the Hand of the Person or Persons to whom such Sum was paid. On Oath before the said Justice, that the Overseer neglects or refuses to pay the said Sum, he may by Warrant, &c. order it to be levied by Distress and Sale of the Overseer's Goods; and the Overplus (if any) after the Charges of such Distress satisfied, shall be returned to such Overseer, and in this Case he shan't be allowed it in his Account.

4. The Reader may observe, that the two foregoing Sections relate to a Sort of People whom this new Statute has distinguished by the Name of idle and disorderly Persons, as being the lowest Class of Offenders in this Kind. The next, or middle and second Class, is that of Rogues and Vagabonds; and by this Statute, all Persons going about as Patent-Gatherers, or Gatherers of Alms, under Pretences of Loss by Fire, or other Casualty; or going about as Collectors for Prisons, Gaols or Hospitals; all Fencers and Bearwards, common Players of Interludes, and Persons who for Hire, Gain or Reward, act, represent, or perform, or cause to be acted, represented, or performed, any Interlude, Tragedy, Comedy, Opera, Play, Farce, or other Entertainment of the Stage, or any Parts or Part therein, not being authorised by Law; all Minstrels, Juglers, Persons pretending to be Gypsies, or wandering in the Habit or Form of *Egyptians*, or pretending to have Skill in Physiognomy, Palmistry, or like crafty Science, or pretending to tell Fortunes, or using any subtil Craft to deceive and impose on any of his Majesty's Subjects; or playing or betting at any unlawful Games or Plays; Persons who run away and leave their Wives or Children, whereby they become chargeable to any Parish or Place; petty Chapmen and Pedlars wandering abroad, not being duly licensed, or otherwise authorized by Law; and all Persons wandering abroad, and lodging in Alehouses, Barns, Out-Houses, or in the open Air, not giving a good Account of themselves; and

and all Persons wandering abroad and begging, pretending to be Soldiers, Mariners, Seafaring Men, or pretending to go to work in Harveſt; and all other Persons wandering abroad and begging, are to be deemed Rogues and Vagabonds. But this is not to extend to Soldiers wanting Subſiſtence, having lawful Certificates from their Officers, or the Secretary at War, or to Mariners or Seafaring Men, licensed by Writing under Hand and Seal of a Juſtice, &c. (ſetting down the Time and Place of their Landing or Diſcharge, and the Place to which they are to paſs, and the Names of the Chief Towns or Places through which they are to paſs, and limiting the Time of their Paſſage) while they continue in the direct Way to the Place to which, &c. and during the Time limited; or to Persons going abroad to Work at lawful Work, in the Time of Harveſt, ſo that they carry with them a Certificate in Writing, ſigned by the Miniſter, and one of the Churchwardens or Chapelwardens, or one of the Overſeers of Poor of the Pariſh, &c. where they inhabit; declaring that they have a Dwelling-Houſe or Place there, in which they inhabit.

Exception for
Soldiers and
Mariners, &c.

5. The Reader may obſerve, that the Offenders deſcribed in the fourth Section above, are of an higher Nature than thoſe deſcribed in the ſecond Section; and the Offenders are therefore enacted to be deemed Rogues and Vagabonds, whereas thoſe in the ſecond Section were only to be deemed idle and diſorderly Persons. Thus (in the ſecond Section) Persons who threaten to run away, and leave their Wives and Children to the Pariſh, are Offenders of an inferior Claſs to thoſe who (as in the fourth Section) actually do run away, and leave, &c. Again, in the ſecond Section, Persons who not having wherewithal to maintain themſelves, live idle, and reſuſe to Work at the uſual Wages, are Offenders of a Claſs inferior to theſe who employ themſelves in fraudulent or vicious Practices, for their Livelihood, as Impoſtors in collecting Charities, Fencers, Bearwards, Players, Juglers, Fortune-tellers, &c. Again, (in the ſecond Section) People who beg in their own Pariſhes, are Offenders in a lower and leſſer Degree than thoſe who (in the fourth Section) wander abroad, and lodge in Alehouſes, Barns and Out-houſes or the open Air, not giving a good Account of themſelves; or wander abroad and beg.

Difference be-
tween Offen-
ders of the
firſt and of the
ſecond Claſs.

6. Having in the fifth Section, in ſeveral Inſtances, ſhewn the Difference in Degree between the Offenders of the lower and the middle Claſs, the Reader may the more clearly perceive how they ſtill differ from thoſe of the higheſt and third Claſs, which this Statute, in the next Place, takes Notice of, viz. Incorrigible Rogues; this Branch begins with End-gatherers offending againſt an Act made in the 13th Year of his late Maſteſty King George the Firſt, intituled, *An Act for the better Regulation of the Woollen Manufacture, and for preventing*

Incorrigible
Rogues
deſcribed.

Diſputes

Disputes amongst the Persons concerned therein; and for limiting a Time for prosecuting for the Forfeiture appointed by an Act of the 12th Year of his Majesty's Reign, in Case of Payment of the Workmens Wages in any other Manner than in Money, being convicted of such Offence; and Persons apprehended as Rogues or Vagabonds, and escaped from the Persons apprehending them, or refusing to go before a Justice or Justices, &c. or to be examined upon Oath before such Justices; or refusing to be conveyed by any such Pass as in this Act after directed, or knowingly giving a false Account of themselves on such Examination, after Warning given them of their Punishment. All Rogues or Vagabonds who shall break or escape out of any House of Correction, before the Expiration of the Term for which they were committed, or ordered to be confined by Virtue of this Act; and Persons who, after having been punished as Rogues and Vagabonds, and discharged, again commit any of these Offences; all these are to be deemed incorrigible Rogues, within the true Intent and Meaning of this Act.

Difference between Offenders of the third or highest Class, and those of the two former.

7. The Reader may observe upon the sixth Section, that (except the End-gatherers) the Persons, who are enacted to be deemed incorrigible Rogues, are Persons who, to their being Rogues and Vagabonds before, or lawfully questioned or prosecuted as such under the Terms of this Act, have to such their Offences superadded some other gross Act of Misbehaviour, as escaping from a lawful Arrest for this Purpose, or refusing to be amenable to the Law; or repeating their former Offences, or others of equal Degree or Malignity. The Justice is expressly directed by the Act to warn them of the Danger of giving a false Account of themselves, on their Examination before him; a Piece of Lenity more agreeable to the Mercy of a British Legislature, than proper or competent to the Nature of the Offence which it is intended to prevent: For when a Vagabond, being put under the solemn Obligation of an Oath by a Magistrate, shall appear so profligate and hardened, as to forswear himself, equally defying all Laws Human and Divine, and believing the Omnipresent and Omniscient to know as little of him as the Justice of Peace doth, it should seem a Benefit to the Publick to send such a Person out of the Kingdom, to a Country thinner of People, where he could do less Mischief, and be more easily compelled to apply himself to Labour. The before-mentioned Statute of 13 G. 1. so far as relates to the Description of End-gatherers, being the first Species of incorrigible Rogues above, *Sec. 6.* is as follows, *viz.* Persons who (after the first Day of June 1727.) are found collecting, buying, receiving, or any Ways carrying or conveying Ends of Yarn, Wests, Thrums, Short Yarn, or other Refuse of Cloth, Drugget,

End gatherers.

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Drugget, or other Woollen Goods, or Goods mixed with Wool, (Flocks and Pinions only excepted, in any Bag or Bags, or other Convenience for carrying such Ends of Yarn, &c. And by the said former Act, viz. 13 G. 1. any Constable, &c. by Warrant of one Justice, may search and examine such Person and Bag, &c. And if on Search he finds on or with such Person any such Ends, &c. he is to carry him or her before a Justice, &c. where found and discovered so offending; and the Person, upon due Conviction of any of the said Offences, on Oath of one Witness, or by Confession, &c. shall be deemed a dangerous and incorrigible Rogue, Vagrant, or Person, and liable to be punished as such by 12 Ann. now repealed.

8. If any Persons shall be found offending against this Act, it shall be lawful for any Person whatsoever to apprehend the Person so offending, and to convey, or cause to be conveyed to some Justice, &c. the Person so apprehended, to be proceeded against in such Manner as in this Act after directed: And if any Constable or other such Officer refuses or neglects to use his best Endeavours to apprehend or convey to some Justice, such Offender, it is a Neglect of Duty in such Officer, and he shall be punished as in this Act is after directed. And if any other Person being charged by any Justice, &c. so to do, refuses or neglects to use his best Endeavours to apprehend and deliver to the Constable or other such Officer, or to carry such Offender before some Justice, &c. where no Constable or other such Officer can be found, such Person so offending, as aforesaid, being thereof convicted upon View, or by Oath of one or more credible Witnesses, before one or more Justices, &c. he forfeits ten Shillings to the Use of the Poor of the Parish, &c. where, &c. to be levied by Distress and Sale, &c. by Warrant from any Justice, &c. the Overplus (if any) after Charges of Distress satisfied, to be returned to such Offender. If any Person not being a Constable, or other such Officer, apprehend such Rogue or Vagabond, and deliver him or her, to a Constable, or other such Officer, or convey or cause to be conveyed him or her to some Justice, according to Directions of this Act, or if Constable, or other such Officer, shall so apprehend and convey such Rogue or Vagabond, such Justice, &c. may reward such Constable or other Person, by making an Order under Hand and Seal, upon the High or Chief Constable, to pay ten Shillings to the Person so apprehending, within one Week after Demand, and producing such Order, and upon his giving a Receipt for the same, and the Treasurer of the County, &c. is to allow or pay it to the High Constable on his passing his Accounts, and delivering the Order and Receipts, and his own, to the Treasurer; and the Treasurer is

Any Person
may apprehend
Offender.

Reward for
apprehending.

How paid.

Method of allowing Payment.

to be allowed it at Sessions, upon producing and delivering up his Vouchers. Cities, &c. where there are no High Constables, the petty Constables, &c. are to have Allowance upon producing and delivering up their Vouchers. And if any High or Chief Constable, or where none such, if a petty Constable, &c. refuses or neglects to pay ten Shillings (as above in this Section) such Justice, &c. may by Warrant, &c. levy 20 s. by Distress, &c. and thereout allow the above Reward of ten Shillings to the Person intitled, and such other Recompence for his Trouble, Loss of Time, and Expences, as the Justices, &c. thinks fit; the Overplus (if any) to be returned to the Constable, &c. on Demand.

9. *Note*; Any Persons may arrest Offenders without any other Warrant than the Act: That Power is given them for their own Conveniency, and speedy Remedy. But they must do it under the Penalty of ten Shillings, if charged by a Justice so to do.

General privy Search.

10. The Justices for every County, &c. or two of them, are four Times in the Year, or oftner, to meet in their Divisions, and by Warrant command the Peace-Officers of every Hundred, Parish, &c. in their Divisions, who shall be assisted with sufficient Men of the same Places, to make a general privy Search in one Night throughout their Limits, for the finding and apprehending of Rogues and Vagabonds; and every Justice shall also, on receiving Information that Rogues and Vagabonds are in any Place within his Jurisdiction, issue his Warrant to the Constable, or other Officer of such Place, to search for, and apprehend such Rogues and Vagabonds, and such as they find and apprehend upon such Search, they are to cause to be brought before any Justice, &c.

Examination of Rogues, &c.

11. Rogues or Vagabonds apprehended according to any of the above Directions, and brought before a Justice, are to be examined on Oath, and so is any other Person, for his Information of the Condition and Circumstances of the Persons apprehended, and of the Parish, &c. where last legally settled; the Substance of the Examinations to be put into Writing, and subscribed or signed by the Persons examined, and by the Justice, and transmitted to the next General or Quarter-Sessions to be kept on Record; and such Justice is to order all Persons so apprehended to be publickly Whipt by the Constable, petty Constable or Tithingman, or some other Person to be appointed by such Constable, &c. of such Parish, &c. where such Persons were apprehended, or to order such Persons to be sent to the House of Correction, there to remain until the next General or Quarter Sessions, or for any less Time; and after such Whipping or Confinement, such Justice may, if they think convenient, by a Pass under Hand and Seal as after directed, cause such Person to be

In Writing, signed, &c.

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conveyed to the Place of his last legal Settlement; and if it can't be found, then to the Place of Birth; or if under the Age of fourteen Years, and have a Father or Mother living, then to the Place of the Abode of such Father or Mother, there to be delivered to some Churchwarden, Chapelwarden, or Overseer of the Poor of such Parish, &c.

12. The Pass (enacted as above, *Sec. 11.*) is to be in the Form, or the Effect following:

To the Constable of _____ in the County of _____
 or to the Tithingman or other Officer (*as the Case shall be, or if the Offender is committed to the House of Correction, then to the Governor or Master thereof*) and also to the Constables and other Officers whom it may concern, to receive and convey; and to the Churchwardens, Chapelwardens, or Overseers of the Poor of the Parish, Town, or Place (*as the Case shall be*) of _____ in the County of _____ or either of them to receive and obey.

W Hereas _____ was (or were) apprehended in the Parish of _____ (or in the Town of _____ or other Place, describing it) as a Rogue and Vagabond, or as Rogues and Vagabonds, videlicet, wandering and begging there, (or as the Case shall be) and upon Examination of the said _____ taken before _____ upon Oath, (which Examination is hereunto annexed) it doth appear, that his, her or their last legal Settlement is at _____ in this County, (or in the County of _____) or that the said _____ was (or were) born in the Parish of _____ in this County, (or in the County of _____) and hath (or have) not since obtained any legal Settlement; or that the said _____ is (or are) under the Age of fourteen Years, and hath (or have) a Father or Mother living or abiding in the Parish (or Town) of _____ (or other Place, describing it): These are therefore to require you the said Constable, or other Officer, (or Governor or Master of the House of Correction, as the Case shall be) to convey the said _____ in the next direct Way to the said Parish (or Town) of _____ (or other Place) within the said County, and there to deliver him (her or them) to some Churchwarden, Chapelwarden, or Overseer of the Poor of the same Parish, (Town or Place) to be there provided for according to Law (or in Case the said Parish, Town or Place, to which such Person or Persons is or are to be sent, lies in some other County, Riding, Division, Corporation, or Franchise, having separate General or Quarter-Sessions of the Peace, then the Form shall be as follows, viz.) to convey the said _____ to the Parish (or Town) of _____ that being the first Parish (or Town) in the next

next Precinct through which he (she or they) ought to pass in the direct Way to the said Parish (or Town) of which he (she or they) is (or are) to be sent, and to deliver him (her or them) to the Constable or other Officer of such first Town (or Parish) in such next Precinct, together with this Pass and the Duplicate of the Examination of the said taking his Receipt for the same, and the said (or are) to be thence conveyed on in like Manner to the said Parish (or Town) of there to be delivered to some Churchwarden, Chapelwarden or Overseer of the Poor of the same Parish, (Town or Place) to be there provided for according to Law. And you the said Churchwardens, Chapelwardens and Overseers of the Poor, are hereby required to receive the said Person, (or Persons) and to provide for him (her or them) as aforesaid.

Duplicate of
the Pass.

Recorded.

And Evidence,
&c.

13. The Justice, &c. is to make, or cause to be made, a Duplicate of the Pass, and to sign it, and transmit it to the next General or Quarter-Sessions, to be kept on Record, and shall annex the Duplicate of the Examination to the Pass, and send it with the same, and the said Pass, Examination and Duplicates thereof may be read in any Court of Record in England, Wales, or Beravick, as Evidence.

14. Where any Offender against this Act is committed, as aforesaid, to the House of Correction, to remain till next Sessions; and the Justices at Sessions, on Examination of the Circumstances of the Case, adjudge such Person a Rogue or Vagabond, or an incorrigible Rogue, they may, if they think convenient, order such Rogue, &c. to be kept there to hard Labour, not exceeding six Months more, and an incorrigible Rogue not exceeding two Years more, nor less than six Months from Order of Sessions; and during Confinement to be whipped at Times and Places, and in such Manner, as in Discretion they think fit; and such Person (if Sessions think convenient) may be afterwards sent away by Pass *mutat. mutand.* and if such Person, being a Male, is above twelve Years old, they may before discharged from House of Correction send him to the King's Service by Sea or Land; and if such incorrigible Rogue so ordered by Sessions to be detained, &c. shall before Expiration of the Time, &c. break out, or make his Escape, &c. or offend again in like Manner, it shall be Felony, and on Conviction he shall be transported, not exceeding seven Years.

15. Note; The Clause to make it Felony without Clergy to return from such Transportation, is omitted in this new Act. *Quere*, Whether it be implied.

16. It is to be understood, not only on the Direction for Transportation in the 14th Section, but in all Acts or Clauses of

Caution as to
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of Acts which affect the Life, Liberty, or Property of the Subject, by creating an Offence with a Penalty, or creating a new Penalty for an old Offence, that Convictions must be according to the Course of the Common Law, *i. e.* by the Verdict of a Jury, if not otherwise given by Statute. And this being a Case of Felony, it must be by the Indictment of the Grand Jury, and afterwards the Verdict of the Petty Jury.

17. Justices who make Passes, are at the same Time with the Pass to cause to be delivered to the Constable, &c. appointed to convey him or her, a Note or Certificate, ascertaining how he, &c. is to be conveyed, by Horse, Cart, or on Foot, and what Allowance such Constable, &c. is to have for conveying, in the Form, or to the Effect following:

Justice to certify Manner of Conveyance.

The Form of the Certificate for the Manner of Passing, &c.

18. **W** Hereas by a Pass (reciting the Substance or Effect of Certificate for the said Pass) I (or we) do hereby order and direct conveying of the said Person or Persons to be conveyed on Foot (or in a Cart, Rogues. or by Horse, &c.) to the said Town or Parish of in or other Place (describing it) in the Way to such Parish, Town or Place (as the Case shall be) in Days Time, for which the said Constable, &c. is to be allowed the Sum of and no more. Given under my Hand (or our Hands) this Day, &c.

19. The Constable, &c. who receives the Pass and Certificate, is to convey, or cause to be, &c. the Persons named in the Pass, in such Manner and Time as by the Pass directed, the next direct Way to the Place where they were ordered to be sent if in the County, &c. where the Person was apprehended. But when the Place, to which the Person apprehended is to be sent, lies in some other County, &c. he shall deliver the said Person to the Constable, &c. of the first Town, &c. in the next County, &c. in the direct Way to the Place to which such Person is to be conveyed, together with the Pass and Duplicate of Examination, taking his Receipt for the same; and such Constable, &c. shall, without Delay, apply to some Justice, &c. who shall make the like Certificate, *mutatis mutandis*, and deliver it to the Constable, &c. who is with all Speed to convey the Person unto the first Parish, &c. in the next County, &c. in the direct Way to the Place to which such Person is to be conveyed; and so in like Manner from one County, &c. to another, till they come to the Place to which such Person is sent; and the Constable, &c. who shall deliver such Person to the Churchwarden, &c. ordered

dered to receive him by such Pass, shall at the same Time deliver the said Pass, with the Duplicate of Examination, taking their Receipt for the same; and if the Churchwardens, &c. shall think the Examination false, he may carry the Person so sent before a Justice, who, if he see Cause, may commit such Person to the House of Correction till next Quarter-Sessions; and the Justices there, if they see Cause, may deal with him as an incorrigible Rogue; but the Person so sent shall not be removed from the Place to which sent, but by Order of two Justices, as in Case of other Poor.

20. Any Justice before whom a Vagrant is carried, may order him to be searched, and their Bundles inspected by the Constable, &c. in the Presence of the Justice; and if such Vagrant have wherewithall to pay for their Passage, either in the whole or in Part, the Justice shall order so much of the Money to be paid, or other Effects to be sold, towards the Expence, returning the Overplus, (if any) deducting Charges of Sale.

Passing from
the four Nor-
thern Coun-
tries into Scot-
land.

21. The Constable, &c. of any Parish, &c. in *Cumberland, Northumberland, Durham, or Town of Berwick upon Tweed*, upon any Person's being delivered to them by a Pass and Examination, who was apprehended within the said Counties or Town, or brought to them according to the Direction of this Act, whose Place of legal Settlement is in *Scotland*, are to deliver the Examination to the Clerk of the Peace, to be kept among the Records, and to convey, &c. such Person, &c. into the next adjoining Shire in *Scotland*, and deliver him to some Constable, &c. of the next Parish, taking his Receipt for him. This Officer is to receive the Person, give the Receipt, and dispose of him according to Law.

22. If any such Vagrant, (as in *Secl. 21.*) after being so sent into *Scotland*, shall be found wandering, begging, or misbehaving himself in *England*, he shall be punished as an incorrigible Rogue.

23. In the present Act a Clause is omitted which was in the former, to punish Masters of Ships who import Rogues from abroad.

Masters of
Ships to carry
Rogues abroad.

24. Every Master of a Vessel bound for *Ireland*, the *Isle of Man, Jersey, Guernsey, or Scilly*, is upon Warrant to him directed by a Justice, &c. where the Ship lies, to take on Board the same such Vagrants as are named and expressed in the Warrant, and convey them to such Place in *Ireland*, &c. as the Ship is bound to, or shall arrive at; the Constable who serves him with the Warrant, is to pay him for Charges such Rate per Head, as the Justices at Sessions from Time to Time appoint. The Master is, on the Back of the Warrant, to sign a Receipt for the Money paid, and the Vagrants so brought and

Payment.

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and delivered to him; the Warrant thus indorsed is to be produced to the same Justice, and upon his Allowance under his Hand, the Money to be repaid by the County, as, by this Act, Money for conveying Vagrants. Masters neglecting or refusing to receive on Board, or transport such Vagrant, or indorse or sign such Receipt, forfeit 5 *l.* to the Use of the Poor of the Parish, to be levied by Distress and Sale of the Ship or Goods; &c. returning the Overplus on Demand, after Penalty and Charges of levying the same, provided no Master be compelled to take on Board more than one Vagrant for every 20 Tons Burthen.

Penalty on Refusal.

25. Justices at Sessions are, from Time to Time, to appoint what Allowance *per* Mile, &c. shall be made for passing, &c. Rogues, &c. and may make other Orders, &c. to be observed by all Justices, Constables, &c.

Allowance for Passing, how settled.

26. If a petty Constable, or other such Officer of a Parish, &c. bring to a High or Chief Constable such Certificate, given him by a Justice of the proper County, &c. ascertaining how, and for what Rates or Allowances he is required to convey any Rogues, &c. together with a Receipt or Note from any Constable, &c. to whom the Person so to be conveyed was delivered, the High Constable must pay to such Officer the Rates or Allowances ascertained in and by such Certificate, and no more; taking from him such Certificate, and his Receipt for the same; to be allowed the same on passing his Accounts, upon delivering up the Certificate and Receipt, and giving his own Receipt to the Treasurer; and the Justices at Sessions are to allow it to the Treasurer *ut supra*. If a High Constable refuse to pay, &c. on Demand, any Justice by Warrant, &c. may levy double the Sum ascertained by Certificate, by Distress and Sale, &c. and thereout allow the petty Constable, &c. the Sum ascertained in and by Certificate and Receipt, and such other Recompence for his Trouble, Loss of Time and Expences, as the Justice thinks fit; the Overplus, if any, to be returned to the High Constable on Demand. In Cities, &c. where there is no High Constable, the petty Constables are to have like Allowance.

Payments how allowed, and carried forward.

Penalty on High Constable for Non-payment.

27. Or if any Governor, &c. of a House of Correction shall deliver such Certificate and Receipt to any Treasurer, he shall pay the Rates therein to such Governor, taking his Receipt for the same, which shall be allowed the Treasurer in his Accounts.

Treasurers to pay Money expended.

28. If any petty Constable, &c. or Governor, &c. counterfeit such Certificate, Receipt or Note, or make, or knowingly permit to be made, any Alteration in it, he forfeits fifty Pounds. And if he do not actually convey, or cause to be, &c. the Person, &c. or do not deliver to the proper Person, or if any Constable, &c. refuses to receive such Person sent

Counterfeiting or altering Receipt, &c.

Not conveying.

Forfeitures
how levied.

See Sect. 31.

Parishes to set
Persons on
Work.

Lunaticks.

Constables,
&c. neglecting
Duty.

to them, or to give a Receipt or Note *ut supra*, such Officer, &c. forfeits 20 *l.* The Forfeitures to be levied by Distress and Sale, &c. by Warrant or Order of Justices in Sessions; a Moiety to the first Informer, the other Moiety to the Treasurer, to be applied as Part of the publick Stock; the Overplus (after Charges) to the Officer on Demand. I conceive the Conviction is to be by a Jury upon an Indictment, the Act being silent as to that Matter.

29. Parishes, &c. are to take Care to employ in Work, or place in some Work-house or Alms-house, Persons, &c. conveyed to them by Pass until they betake themselves to some Service or other Employment; and if they refuse to work, or betake themselves, &c. Overseers of the Poor of the same Parish may cause him to be carried before a Justice, in order to be sent to the House of Correction, there to be kept to hard Labour.

30. Where there is any Person, who by Lunacy, or otherwise, is furiously mad, or so disordered in his Senses, that he may be dangerous to be permitted to go abroad, two Justices by Warrant directed to Constables, Churchwardens and Overseers, &c. or some of them, may cause him to be apprehended, and kept safely locked up in some secure Place within the County, &c. as they appoint; and, if they find it necessary, to be there chained, if his last legal Settlement was in any Parish, &c. within the County, &c. and if the Settlement be not there, then to be sent to the Place of last legal Settlement by a Pass, and be locked up or chained. The Charges of removing, keeping, maintaining and curing, during such Restraint (which shall be for such Time only as such Lunacy continues) shall be paid (being first proved upon Oath) by Order of two Justices, directing the Churchwardens or Overseers where any Goods or Lands of such Persons are, to seize and sell so much of the Goods and Chattels, or receive so much of the annual Rents of the Lands and Tenements as is necessary to pay the same, and to account at next Quarter-Sessions; but if such Person has not an Estate to pay and satisfy the same, over and above what shall be sufficient to maintain his or her Family, then to be satisfied and paid as the Poor, &c. are provided for. But this Act is not to abridge the King's Prerogative, or Power of the Lord Chancellor, &c. or of *Lancaster*, or of *Chester*, concerning Lunaticks, or to prevent any Friend of such Lunaticks from taking them under their own Care.

31. If any Constable, &c. or Governor, &c. be defective, remiss or negligent in his Duty in the Execution of this Act in any Case for which no Punishment is therein before particularly provided; or if any Person disturbs or hinders the Execution of this Act; or rescues any Person apprehended or

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passing from Place to Place by Virtue thereof, or be advising, aiding or assisting to his Escape, on Conviction by Oath of one credible Witness before one Justice, &c. where, &c. (which Oath he may administer) he forfeits for each Offence a Sum not exceeding five Pounds, nor less than ten Shillings to the Use of the Poor of the Parish, &c. where the Offence, &c. to be levied by Distress, &c. by Warrant from such Justice, returning the Overplus, &c. upon Demand after Forfeiture and Charges; if no sufficient Distress, such Justice may commit to the House of Correction to hard Labour, not exceeding two Months.

See Sect. 28.

32. Persons who knowingly permit Rogue, Vagabond, or incorrigible Rogue to lodge, or take Shelter in their House, Barn, or other Out-house or Building, and do not apprehend and carry such Rogue, &c. before some Justice, or give Notice to a Constable, &c. so to do, on lawful Conviction by Confession, or Oath of one credible Witness before two Justices, &c. where, &c. forfeit a Sum not exceeding 40 s. nor under 10 s. a Moiety to the Informer, the other to the Use of the Poor, &c. to be levied by Distress, &c. by Warrant from such Justices, returning the Overplus, &c. and if any Charge be brought upon a Parish, &c. by Means of such Offence, it shall be levied on the Offender's Goods, &c. and for Want of Distress, Commitment by such Justices to the House of Correction, &c. not exceeding one Month. *Note*; Before this Act, viz. *Trin. 1 Ann.* it was resolved, that an Indictment did not lie for entertaining Vagrants, says the Book, Judgment was given for the Defendant. 1. Because it was not said that they were Vagrants at the Time of the Entertainment by the Defendant. 2. Because the Entertainment of them, viz. the giving them Meat, Drink and Lodging is not any Offence within 39 *Eliz. c. 4. Regina v. Langley, 2 Ld. Raym. 790.*

Permitting Rogues to Shelter, &c.

Penalty.

And Charge.

33. If any Child above the Age of seven Years, found with Person offending against this Act, be committed to the House of Correction as aforesaid, the Justices at Quarter Sessions, if they see convenient, may order such Child to be placed out as a Servant or Apprentice till the Age of twenty-one Years, or for a less Time. And if any Offender found with such Child, be again found with the same Child, (which was so placed out) offending against this Act, such Offender shall be deemed an incorrigible Rogue. Where a Woman wandering and begging is delivered of a Child in Parish, &c. to which she does not belong, whereby she becomes chargeable, the Churchwardens, &c. may detain her in their Custody until they can safely convey her to a Justice, who shall examine her, and commit her to the House of Correction until next General or Quarter-Sessions, who may (if they see convenient) order

Bastard, where
to be sent.

Appeal.

Proviso for
Cities, &c.
having special
Acts, &c.

her to be publicly whipped, and detained in the House of Correction for any further Time, not exceeding six Months; and upon Application by Churchwardens or Overseers of the Place where she was so delivered, the Justices at such Sessions shall order the Treasurer, &c. to pay a Sum, as a reasonable Satisfaction for the Charges such Place has been put to on such Woman's Account. And if such Woman be detained and conveyed to a Justice as aforesaid, the Child, &c. if a Bastard, shall not be settled in the Place where so born, nor be sent thither for want of other Settlement by a Pass, by Virtue of this Act; but the Settlement of such Woman shall be deemed Settlement of such Child.

34. Persons may appeal from any Act of Justices, &c. to the next General and Quarter-Sessions, giving reasonable Notice.

35. In Cities, &c. where special Acts of Parliament direct the Charge of passing Vagrants in another Manner, or the apprehending and conveying them by other Persons, those Acts shall continue to be executed. And if any Person be delivered to a Beadle or Constable, within the City or Liberties of the City of London, to be conveyed on as directed by this Act, the said Beadle, &c. shall not deliver such Person in any other Precinct within the said City, &c. but in the next.

36. Where Persons offending against this Act have been committed to the House of Correction, there to remain until the next General or Quarter-Sessions, if, upon their Examination, no Place can be found to which they may be sent by a Pass, the Justices shall at Sessions order them to be detained and employed in the House of Correction until they can provide for themselves, or until the Justices at General or Quarter-Sessions can place them out in some lawful Calling, &c. within the Realm or Plantations in *America*, &c.

37. This Act is not to prejudice the Heirs or Assigns of *John Dutton*, late of *Cheeshire*, Esq; deceased, &c. This is a Confirmation of a Grant to them to license strolling Fiddlers of *Chester*.

38. This Act is to commence from the first of *June* 1744, and from that Time repeals the Statute of Vagabonds of 13 Geo. 2. but all the Acts therein mentioned to be repealed, are hereby declared to be repealed, and continue repealed. For the rest of this Statute 17 Geo. 2. see *Chap. 42. Sect. 6. &c.*

39. *Notes* The Act 39 *El. c. 4.* for punishing Rogues and Vagabonds, and the Act 1 *Jac. 1. c. 7.* for the Continuance and Explanation of the same, and so much of another Act made 7 *Ja. 1. c. 4.* for the Execution of divers Laws and Statutes heretofore made against Rogues, Vagabonds, &c. as relate to the privy Search thereby directed to be

be made, shall be and are repealed by 12 Ann. c. 23. which, to this Purpose only, was confirmed by Stat. 13 G. 2.

40. By Statute 6 G. 1. c. 19. the Justices of Peace within 6 G. 1. c. 19. their respective Jurisdictions may commit Vagrants, and other criminal Persons charged with small Offences, either to the common Gaol or House of Correction, as they in their Judgment shall think proper.

41. N. B. Upon Stat. 12 Ann. c. 23. §. 4. one Justice could not make an Order to send a Vagrant to the Place of his last legal Settlement, though one Justice might make a Pass to pass him as a Vagrant, *Inhabitants of Bamber* versus *Inhabitants of Hannington*, 2 Ld. Raym. 1360. but this is now otherwise, the said Act of Queen Anne being repealed, and the new Act *supra* having given that Power to one Justice.

42. This is a short Abstract of all the Laws now in Being relating to both the Sorts of Poor: What I have further to add about the Poor may be ranged in alphabetical Order under the following Heads, *viz.*

<i>Alms.</i>	<i>Parishes and Parishioners.</i>
<i>Appeals.</i>	<i>Penalties and Forfeitures to the</i>
<i>Apprentices.</i>	<i>Poor.</i>
<i>Bastards.</i>	<i>Poor Prisoners.</i>
<i>Beggars.</i>	<i>Rates and Assessments.</i>
<i>Certificates.</i>	<i>Removals.</i>
<i>Cottages.</i>	<i>Servants.</i>
<i>Families left on Parishes.</i>	<i>Settlements.</i>
<i>Houses of Correction.</i>	<i>Testimonials.</i>
<i>Licences.</i>	<i>Trades for employing Poor.</i>
<i>Maintenance of Poor.</i>	<i>Vagrants.</i>
<i>Orders of Justices.</i>	<i>Workhouses.</i>
<i>Overseers of the Poor.</i>	

C H A P. XXXIV.

Alms.

1. **A**ND first as to Alms, none may be suffered to ask Relief at any Man's Door, tho' within his own Parish, unless it be by Order of the Overseers: Neither may any be suffered to beg by the Highway, tho' in their own Parish. *Dalt. c. 73. p. 227.*

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2. If

Any Person
may relieve the
Poor privately,
but Parish Poor
must be regi-
stered.

And wear a
Badge, &c.

No Justice to
order Relief
till Oath made.

2. If a Man gives Alms at his Door, unless to such Poor who are licensed to beg by the Overseers, he forfeits 10 s.

3. All Persons may relieve any Poor they think fit by private Alms; but to intitle any to the Relief of the Parish, their Names must be registred once a Year in the Parish-Books, unless authorized by Warrant under the Hand and Seal of a Justice of Peace of the Parish; or in Case there be none there, by the next Justice, or by Order of Sessions, except in Cases of pestilential Diseases, the Plague, or Small-Pox. 3 & 4 W. & M. c. 11.

4. Every Person receiving Relief, and their Wives and Children, shall, upon the right Sleeve of their uppermost Garment, wear the Badge of a Roman P. and the first Letter of the Name of their Parish; and Officer relieving any not wearing such Badge, forfeits 20 s. 8 & 9 W. 3. c. 30.

5. No Justice of Peace shall order Relief to any poor Person, until Oath made before him of reasonable Cause, and that the Person had applied to the Parishioners at some Vestry, or publick Meeting, or to two of the Overseers of the Poor of the Parish, and was by them refused to be relieved; and until the Justice hath summoned the Overseers, to shew Cause why Relief should not be given. 9 G. 1. c. 7.

A Justice's Warrant, to relieve a poor Person, according to the Stat. 9 G. 1. c. 7.

To the Churchwardens and Overseers of the Poor of the Parish of, &c. in the County of, &c.

9 G. 1. c. 7.

6. Midd. **W** Hereas A. B. of your Parish hath made Oath before me, Sir T. C. Baronet, one of his Majesty's Justices of the Peace for the County of, &c. that he is very poor and impotent, and utterly unable to provide for himself and Family, so that they must inevitably perish, unless timely relieved; and that he the said A. B. on, &c. past, applied himself to the Parishioners of your Parish at a publick Meeting, as the Law directs, and was by them refused Relief; and whereas I have summoned you the Overseers of the Poor of the said Parish, to shew Cause why Relief should not be given to the said A. B. but you have not made any sufficient Cause appear: These are therefore in his Majesty's Name to command you to pay unto the said A. B. the Sum of 2 s. per Week, for and towards the Support and Maintenance of the said A. B. and his Family, until such Time as he the said A. B. shall be better able to provide for the same, or that you shall be otherwise ordered to forbear the said Allowance. Given, &c.

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7. In every Parish is to be kept a Book or Books, wherein the Names of all Persons, who do or may receive Collection, shall be register'd with the Time when, and the Occasion of their Relief, as long as the Cause for Relief continues, which Books yearly in *Easter Week*, or as often as it shall be thought convenient, are to be produced and examined by the Parishioners, and a new List made of Persons proper to be relieved, as they shall think fit; and no Officer of any Parish (except upon emergent Occasion) shall bring to the Parish Account any Money he shall give to poor Persons not register'd, on Pain of forfeiting 5 *l.* leviable by Distress, by Warrant of two Justices, for the Use of the Poor of the Parish. 9 G. 1. c. 7.

Register of the
Poor must be
kept in every
Parish, &c.

C H A P. XXXV.

Apprentices.

1. **T**HIS is a large Head, and much might be said about it, but I shall confine myself within the Bounds intended by this Treatise, and enlarge no further on it, than as it relates to Parish-Officers, &c. and therefore I shall not mention the Qualifications required by 5 *El.* c. 4. enabling Persons to take Apprentices, nor of the Certificate of three Justices of the County where the Estate lies; because those Certificates are now, and have been for some Time, wholly disused; neither is there Regard had of the Ability of the Parents, whose Children are placed to any Trade whatever; and the Clause, that Woollen-Weavers shall not take Apprentices, unless Father, or Mother have 3 *l.* a Year, is expressly repealed by *Stat.* 5 & 6 *W.* 3. c. 9.

2. Upon Housholders Complaint to a Justice, the Children of Parents not able to keep and maintain them, the Overseers of the Poor, by the Assent of two Justices, may put out to be Apprentices; (*viz.*) the Men-Children till the Age of 24, and the Women-Children till the Age of 21 Years, or Marriage; and all such Children of the Age of seven Years, or above, so bound Apprentices, shall be taken and kept as Apprentices by their Masters. *Stat.* 43 *El.* c. 2.

Boys may be
bound Appren-
tices till 24,
Girls till 21.

3. One Justice of Peace may compel any Person fit to be bound as an Apprentice; and as the Statute enableth the Churchwardens and Overseers (with the Consent of two Justices of Peace) to put out Apprentices, so it doth enable them to place those Apprentices with their Masters: And the said

Justices may
compel Persons
to take Ap-
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Justices

Who are bound
to take Ap-
prentices.

Justices may compel all such as are of Ability to take such Apprentices, according to their Discretion.

4. Every Man who by his Calling and Profession, or Manner of Living, entertaineth and must have Use of other Servants, as Knights, Gentlemen, Clergymen, Yeomen, &c. must entertain such Apprentices: And the Churchwardens, and Overseers (with the Consent of the Justices) may impose upon Masters, refusing to take such Apprentices, a competent Sum of Money for the placing them out elsewhere, and upon the Master's Refusal to pay such Money, two Justices may make their Warrant to levy the same by Distress and Sale of the Offender's Goods. But by *Stat. 8 & 9 W. 3. c. 30.* if a Churchwarden maketh Oath before two Justices of Peace, that a Master refuses a poor Apprentice, such Master shall forfeit 10 *l.* to be levied by Warrant of the said Justices, and Distress thereupon for the Use of the Poor: But if the Master is aggrieved thereby, he may appeal to the next Sessions, whose Order is final.

Law Case for
refusing to take
an Apprentice.

5. Before this *Stat. Hill. 29 & 30 Car. 2.* upon Indictment against a Person for refusing to accept an Apprentice bound by the Churchwardens and Justices of Peace according to 43 *El. c. 2.* it was resolved, that a Man might not be compelled to accept an Apprentice, for such may be a Thief, Spy on his Family, Enemy, &c. *Vent. Rep. 325.* but 1 *Keb. Rep. 431. contra.* In the Case of *The King against Fairfax, 1 W. & M.* it was resolved by *Dolben, Gregory and Eyres* Justices, (against the Opinion of *Holt, Ch. Just.*) that Justices of Peace have a Power to compel Housekeepers to take poor Children Apprentices: But the Order was quash'd in this Case, because it was made originally at the Sessions, whereas it ought to have come thither by Appeal. *Comb. 164, 165, 166.* See *the Book at large*, and see *Comb. 289.* the first Point allowed by *Holt, Ch. Just.* to be settled; and there it is also held that it need not be said that *the two Justices live in or near the Place*; for, as to this, the Statute is but Directory, and it need not be averred that the Parents were not able to maintain the Child; for the Churchwardens and Overseers have this in their Discretion.

It is not neces-
sary for Parish
Officers to give
Money with
them.

6. Justices in Sessions may place Apprentices to Masters out of the Parish or Hundred, where fit Masters are not to be found in such Parish, &c. but Churchwardens may not place them to Masters in another Parish. There is no Necessity of giving Money with such Apprentices, for 'tis said to be discretionary in the Churchwardens and Overseers, whether they will give any or not, on considering the Circumstances of Age and Ability. If Money be given, it must be raised by the Overseers by a Tax on the Inhabitants.

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7. Masters receiving Money given by charitably disposed Persons for placing out poor Apprentices, must give Security to repay the same at the End of seven Years, or within one Year after the Death of the Apprentice, if he die within that Time. *Stat. 7 Jac. 1. c. 2.* It seems reasonable if a Master, who is bound to keep an Apprentice, turns him out, whereby he is likely to become chargeable to the Parish, upon Complaint of the Churchwardens, the Justices may order the Master to take him again; and it seems that the Remedy must be by Indictment. *Comb. 405.*

8. A poor Child bound Apprentice, cannot legally be assigned to another Master; but if he be assigned, and actually serves the second Master, he will gain a Settlement where the second Master lives. *Salk. 68. Inhabitants of Castor and Aicles.* But in the City of London, by the Custom, such an Assignment is good.

Apprentices cannot be legally assigned.

9. A Lessee for Years of a Farm taketh an Apprentice, and the Term expires before the Apprenticeship is ended, he must go with the Farm if the Master will permit him; but where a Man taketh an Apprentice by Reason of his Ability, and the Master dies before the Determination of the Apprenticeship, such Apprentice shall go to the Executor or Administrator, if he hath Assets, and if none, then he must return to the Parish where last settled. *Shorr. Rep. 405.*

When Master dies, to whom the Apprentice must go.

10. By *Stat. 7 Jac. 1. c. 3.* it is enacted, that any Person of the Age of 10 Years may be bound Apprentice by his own Agreement, only by Indenture, &c. and if he be above 12, he may be compelled by a Justice; but Persons above 15 Years of Age may not be compelled, they must work, or go to Service, or be sent to the House of Correction, or else be bound over to the Sessions for their Good Behaviour.

11. An Information was brought on *Stat. 5 El. c. 4.* for detaining an Apprentice in Husbandry, being bound till 21, and for departing without a Testimonial; two Judges were of Opinion it would not lie, because the Statute doth not extend to provide against the Departure of an Apprentice by Indenture, but an hired Servant. *Hetley 164.*

Cases about Apprentices.

12. If an Apprentice in Husbandry doth not perform his Duty, the Master may complain to one Justice, whose Business it is to reconcile them, if he can; but if he cannot, then the Justice may send him to the House of Correction, or, more regularly and safely, may bind him over to the Sessions, and from thence he may be sent to the House of Correction.

13. Apprentice assaulting his Master may be sent to the House of Correction, and a Master may justify striking his Apprentice. The Sessions, in this Case, have only an additional Power, viz. to discharge or punish, if one Justice cannot compose the Difference; and therefore Application ought

ought first to be made to him. If the Fault be found in the Master, then the Justice may bind him over to the Sessions, and four Justices there may discharge the Apprentice, which Discharge is to be inrolled by the Clerk of the Peace. The Discharge must be under their several Hands and Seals; and therefore where the four Justices subscribed their Names, and there was but one Seal, the Order was quash'd. 1 Ann. B. R.

14. The Master and Apprentice may agree to leave each other, and, in such Case, the Master may give Leave under his Hand to depart, and then one Justice, out of Sessions, may discharge him, by allowing the Cause of putting him away. But because he cannot be made an Apprentice without Writing, therefore he cannot be discharged but by a Writing under the Hand of the Master.

Cases of Apprentices.

15. Not allowing Meat, Drink or Wages agreed on, this is a good Cause to be allowed by the Justices, and so is Beating him unreasonably. F. N. B. 168.

16. Any departing from his Service whatsoever, refusing to do any reasonable Service, is a Departure in Law; but as to that Part of the Act which says, an Apprentice departing without a Testimonial, shall be whipped as a Vagabond, it must be an Apprentice in Husbandry, and one of full Age; for, otherwise, an Infant, who is the Son of a Gentleman, may happen to be punished as a Rogue. Winch. 25.

17. N. B. That if the Master should put his Apprentice into Apparel, it is a Gift in Law, and he cannot after take it away, though he should part with his Apprentice. Dalt. 153.

18. The Sessions have nothing to do concerning an Apprentice, before it comes before a private Justice. 1 Mod. 287. But see the following Case, an Order to discharge an Apprentice may be originally made at Sessions; and the Justices may order Money to be returned. The King versus Johnson, 1 Salt. 68.

19. Every one bound an Apprentice according to the Statute 5 El. c. 4. tho' under Age, yet is compellable to serve his Time out, as if he were of Age when he was bound, but that is to be understood of a Compulsion by the Means prescribed by that Statute; for the Covenant is not good so as to enable the Master to bring an Action upon it, as was resolved 5 Car. 1 Cro. Car. 129. Gilbert cont. Fletcher.

20. If any Servant or Apprentice shall unlawfully depart, or fly into another Shire, the Justice, &c. may grant Writs of *Capias* to the Sheriff or other Officer within the Shire, if the Servant is gone, to take his Body, returnable before them, &c. who shall imprison the Offender 'till he find Surety to serve his Master again. 5 Eliz. c. 4.

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21. A Master cannot send an Apprentice beyond the Seas, (except he go with him) but may send him to any Place in England. 3 *Bulstr.* 164. *Brown's Case*. Action of Account is not maintainable against an Apprentice. *Brownl.* 67. By Custom of London, a Man may turn over his Apprentice to another within the City. *Goulb.* 161. Action lies by a Master, for enticing an Apprentice to depart from his Service; so if enticed to take Money or play. *March* 3. *Noy* 105.

22. 'Tis doubted whether the Quarter-Sessions can discharge an Indenture of Apprenticeship, where the Apprentice was not imposed upon the Master by the Justices, and compelled to serve. 1 *Vent.* 147. A Bond given by an Apprentice to deliver up a just and true Account, is not within the Clause of *Stat.* 5 *Eliz.* c. 4. but agreed by all the Court to be a good Bond, being for a collateral Matter. *Pasch.* 4 *Jac.* 1. *Bulstr.* 3 *Pl.* 179. *Bennet* cont. *Belfield*. And Order made at the Quarter-Sessions at Gloucester, was removed into B. R. confirming another made by the Justices there, for placing a poor Boy to be an Apprentice in Husbandry, was quash'd, because the Churchwardens were not mentioned in the Order. *Mich.* 1 *W. & M.* 3 *Mod.* 269, 270, 271. *The King* cont. *Fairfax*.

Cases about
Apprentices

23. The Assignment of an Apprentice, even though with his Consent, will not make him an Apprentice to the Assignee within 5 *Eliz.* c. 4. *Trin.* 27 *Car.* 2. B. R. *Keble Rep.* 519. *The King* cont. *Chanrel*; but in London, by the Custom, it is otherwise.

24. Justices of Peace have Consuance of Apprentices bound by Indentures, or otherwise, as well by private Persons, as by the Overseers of the Poor. *Pasch.* 13 *Car.* 2. 1 *Keb.* 6. The Justices of Peace have the same Power of discharging Apprentices, upon the Complaint of the Master against the Apprentice, as upon Complaint of the Apprentice against the Master. *Mich.* 21 *Car.* 2. *Saunders* 315. *Hawksworth* and *Hillary*, *Trin.* 29 *Car.* 2. B. C. 7 *Mod.* 286. *Watkins* cont. *Edwards*. Clergymen are not exempted from taking Apprentices. The Justices may discharge an Apprentice, and order a Restitution of the Money; and if the Master is not bound to appear at the Sessions, yet they may proceed to make an Order against him. Justices of Peace at their Sessions have not Jurisdiction to take an Indictment upon *Stat.* *El.* c. 4. for using a Trade, not having served as an Apprentice for seven Years. *The Queen* versus *Taylor*, 2 *Ld. Raym.* 767. They may discharge an Apprentice who was bound to a Freeman of London before the Chamberlain, if he lies out of the City, and serves his Master out of it; for, in such Case there can be no Proceedings against him before the Chamberlain; otherwise if the Service be in London, for their Liberties, &c.

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are expressly saved by *Stat. 5 El. c. 4. sect. 40. The King versus Collingbourn, 2 Ld. Raym. 1410.*

25. Indictment, for that a poor Boy being put out Apprentice pursuant to the Statute, the Master refused to provide for him; and this was held good since the Statute of 8 & 9 W. 9. cap. 30. 3 Ann. B. R. Indictment will not lie for enticing away a Man's Apprentice.

26. Persons coming into any Parish by Certificate, and taking Apprentices by Indentures, such Apprenticeship shall not make a legal Settlement in such Parish (unless such Master had gained a legal Settlement in the said Parish after Certificate given) but such Apprentice shall have the Settlement in such Parish, &c. as if he had not been bound Apprentice, &c. It shall be adjudged a good Settlement, if an unmarried Person, having no Child or Children, be bound Apprentice for above a Year, though no Notice, &c. unless in Case of a Certificate, as above.

27. Note; In discharging Apprentices, the Practice now is, for one Justice to bind over the Master, at the Complaint of the Apprentice, to the next Sessions, and then four Justices to discharge under their Hands and Seals, and, upon Complaint of the Master against the Apprentice, to send the Apprentice to the House of Correction, if he will not agree to appear at the Sessions, and at the Sessions such Order is to be made under the Hands and Seals of four Justices, as is just. Four Justices at a private Sessions, had discharged an Apprentice, and after, at a General Sessions, the Justices, finding their Mistake, set that Order aside; and now they come into the King's Bench, and move to have the Order of the General Sessions set aside, for that the first Order was according to Law; but the Court denied it, and said, that an Apprentice could not be discharged but by a General Sessions, according to 5 Eliz. c. 4. *Skin. 98. Anonymus.*

28. If the Indenture of an Apprentice in London, by the Default of the Master, be not inrolled within a Year, the Apprentice may sue out his Indenture, and shall be discharged; but if it be the Default of the Apprentice, as if he will not come before the Chamberlain of London to have it done, there he shall not be discharged. 1 Roll's Rep. 205. Palm. 361.

29. One J. S. is bound Apprentice to J. P. of St. John's Parish; J. P. having a small House, the Father was to find Meat, Drink, Washing and Lodging, the Master allowing 2 s. 6 d. per Week. The Apprentice never lodged with his Master at St. John's Parish, but in another Parish; held, the Apprentice gained no Settlement in St. John's Parish by Virtue of the Apprenticeship with his Master, in Regard he never lodged in the Parish for the Space of forty Days. The foregoing Case seems to be the same reported by Lord Raymond, by

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by the Name of *Inhab. St. John Baptist* in the *Devizes v. Inhab. St. James* in *Bishops Cannings*, viz. *Waren* was bound by his Father Apprentice to *J. S.* who lived in *St. John Baptist*, by Indenture, for seven Years; *Waren* never lay one Night in *St. John Baptist*, but worked there, and at Night lay at his Father's in *Bishop's Cannings*, his Father all that Time finding him Meat and Drink, (except Fair-Days, Market-Days and Saturdays, when he eat with his Master) and Washing and Lodging, according to his Covenant in the Indenture of Apprenticeship. *Fortescue* and *Raymond* (*Pratt* absent, and *Powys* doubting) quashed an Order of Sessions which had sent him back to *St. John Baptist*, because binding an Apprentice and serving will not make a Settlement; but the Settlement must be by inhabiting, which cannot be but where the Party lodges. 2 *Ld. Raym.* 1371. The like Resolution was between the King and the Inhabitants of *Cirencester*. *A.* bound an Apprentice to a Butcher in *Cirencester*, lived with his Father for the first six Years, and then came and lived with his Master up and down for three Quarters of a Year. *Object.* Not appear he lived 40 Days with his Master. *Curia*: It is set forth, he was up and down for three Quarters of a Year with his Master; so Room to intend he was Resident 40 Days. A poor Boy being bound Apprentice in *L.* his Master assigned him to *W. R.* who lived in *N.* in another Parish; adjudged, that he gained a Settlement where his second Master lived; for though an Apprentice is not assignable, yet the Assignment is not void, but shall amount to a Contract between the Masters, that the Apprentice shall serve his last Master; and it is good by Way of Covenant, though not to pass an Interest. *Trin.* 3 *G.* 1. *Mod. Cases.* 190. The Son was bound Apprentice to his Father, who was a poor Man, and afterwards he gave up the Indenture of Apprenticeship, and the Son hired himself into another Parish for a Year, and served out the whole Year, but the Indentures were not cancelled; and thereupon an Order was made to send him to the Parish where he was an Apprentice, for he still continued so, because the Indentures were not cancelled. An Apprentice who served two Years in one Parish, was by a verbal Agreement turned over to another Master in another Parish, and there served five Years; it is a good Settlement in the last Parish, and is a Continuance of his first Apprenticeship. *Mod. Ca. in Law and Equ.* 168, 169. between Parishes of *St. Olave* and *Allhallows on the Wall*, and Parishes of *St. Leonard Shoreditch* and *Trinity* Parish. The Children are settled where the Father is settled, and the Father had gained a Settlement in *A.* by serving an Apprenticeship in *A.* tho' he dieted and lodged by Agreement in *B.* *Mod. Ca. in Law and Equ.* 285. *The King ver. Parishioners of St. John.* A Master broke after
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his Apprentice had served two Years; the Apprentice, by his Master's Leave, hired for, and served a Year in another Parish; this gains no Settlement in the latter Parish, because the Indenture was not discharged. *Mod. Ca. in Law and Equ.* 235, 236. between the Parishes of *Buckington* and *Sewington*. But this Case is otherwise reported by Lord *Raymond*, viz. *Richard Allen* was bound an Apprentice to *J. S.* in *Buckington*, and served him in that Parish six Months; *J. S.* then broke, and *R. Allen*; without Direction or Consent of *J. S.* let himself as a Servant to *J. N.* who lived in *St. Michael Sebington*, and served him there two Years: Afterwards *J. S.* delivered unto *R. Allen* his Indenture of Apprenticeship. Court of *B. R.* was unanimous, that *Allen* gained no Settlement by his Service at *Sebington*, he having let himself without his Master's Consent, and the Failure of the Master did not determine the Apprenticeship; and the Master's subsequent delivering up of the Indenture, shall not make good his letting himself; so as to gain a Settlement; he is therefore settled in *Buckington*, where he served his Master above forty Days. *Inhab. Buckington v. Inhab. St. Michael Sebington in Somersetshire*, 2 *Ld. Raym.* 1352. The Justices cannot annul a Contract between Master and Servant, under Colour that the Servant is a poor Person. *Farringdon and Witty Parish*, 2 *Salk.* 527, 528, *Farringdon*. and *Wilcot*, 529. An Apprentice gains a Settlement by his Service, though his Master is only a Lodger. *St. Bride's and St. Saviour's Parish*, 2 *Salk.* 533. Where a Certificate Man takes an Apprentice who serves out his Time, and the Master becomes chargeable, the Apprentice cannot be sent back along with him, though his Children born there shall, by the express Words of the *Stat. 8 & 9 W. 3. c. 36. Cases 2.* *Anne* 204, 205. The like if he serves a Lodger; but bare binding an Apprentice is not a Settlement, unless he serve forty Days. *Ibid.* 206. Serving seven Years to a Trade, without Indenture, is a good Service as an Apprentice, within the *Stat. 5 El. Comb.* 254, 255.

30. A poor Person is bound an Apprentice voluntarily to a Person of the Parish of *Newbury*, no Justices Hands being put to the Indenture; the Sessions held it no Settlement for Want of it. *Curia e contra*: The Statute only extends where a poor Child is put out in a compulsory Way; but here it is by Consent, and so the Statute does not extend to it. A Person is bound Apprentice to a Cobbler who lives in one Parish, and his Stall in another. The Apprentice lived with his Father in a third; and held *per Curiam*, he gained no Settlement as an Apprentice. One *Goulston*, Apprentice to a Seafaring Man, who lived in the Parish of *St. Olaves Jury*; the Apprentice lived with his Master three Months, but always lodged on Shipboard out of the Parish; it did not appear that he was

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sent by his Master to watch on Shipboard ; if he had, it had been carrying on his Master's Business, and continuing in his Service, and doing his Duty. The Court adjudged he was not settled in the Parish. There must not only be an Apprenticeship, but Residency, and a Man is deemed to be resident where he lodges. The Discharge must be inrolled by the Clerk of the Peace, or Town-Clerk, which will be good against the Master, his Executors and Administrators.

Power to bind
poor Boys to
the Sea Ser-
vice.

31. Two or more Justices of Peace in their Counties, Ridings or Divisions ; as also all Mayors, and other chief Officers of any Town corporate ; and likewise the Churchwardens and Overseers of the Poor for the Time being, of each Parish, by and with the Consent and Approbation of such Justices or chief Magistrates, may bind and put out any Boy or Boys of the Age of ten Years, or upwards, who are chargeable, or whose Parents, are chargeable to the Parish wherein they inhabit, or who beg for Alms : To be Apprentices to the Sea-Service, to any of the King's Subjects, being Masters or Owners of any Ship or Vessel used in the Sea-Service, and belonging to any Port in *England, Wales or Berwick, &c.* for so long Time, and until such Boys attain the Age of 21 Years ; and such binding shall be as effectual in Law, as if such Boy was of full Age, and had bound himself by Indenture : And the Age of every such Boy shall be inserted in his Indentures, being truly taken from a Copy of the Entry in the Register-Book, wherein the Time of his being baptized is entered, (where the same can be had) which Copy shall be given and attested by the Minister, Vicar, or Curate of such Parish, wherein his Baptism is registered, without Fee or Reward, and may be writ on Parchment or Paper without any Stamp ; and where no such Entry can be found, two or more such Justices, and such Mayors, or other chief Officers, shall, as fully as they can, inform themselves of such Boy's Age, and from such Information, shall insert the same in the Indentures ; and the same (in Relation to the Continuance of his Service) shall be taken to be his true Age without any further Proof. *Stat. 2 & 3 Ann. cap. 6.*

32. No Master of a Ship shall be obliged to take any such Apprentice under the Age of 13 Years, or who shall not appear to be fitly qualified, both as to the Health and Strength of Body for that Service ; and the Widow, or Executor, or Administrator of such Master shall have the same Power of assigning over such Apprentices to any other Masters who have not their Complement, as is given to those who have taken Apprentices under *Stat. 43 Eliz.* Note ; this Clause in *4 Ann. cap. 19.* does not forbid an Apprentice to be bound to such Master under 13 Years of Age, where the Master is willing to receive him.

33. Churchwardens and Overseers of the Poor of the Parish from whence such Boy shall be so bound, shall pay down to his Master, at the Time of Binding, 50 s. for Cloathing and Bedding, for Sea-Service, for such Boy, to be allowed on their Accounts. *Stat. 2 & 3 Ann. cap. 6.*

34. In large Parishes, where Overseers of the Poor are chosen for Townships or Villages, they may execute this Act. *Ibid.*

35. No such Apprentice shall be compelled or impressed, or permitted, or suffered to list or enter himself in the King's Service at Sea, till he arrives to the Age of 18 Years. *Ibid.* See *Session 46*, 50.

36. The Churchwardens and Overseers shall send the said Indentures to the Collector of the Customs at any Port in the Kingdom, to which such Master or Owner belongs, who shall fairly enter in a Book or Books, to be kept for that Purpose, from Time to Time, every such Indenture, and shall make an Indorsement thereon of the Register thereof, subscribed by such Collector, without Fee or Reward: And Collector neglecting or refusing to enter and indorse, or making false Entry, forfeits five Pounds, for the Use of the Poor of the Parish, from whence such Boy was bound Apprentice: And such Collector, or his Deputy, shall, from Time to Time, transmit Certificates, in Writing, under his Hand, to the Admiralty, containing the Name and Age of such Apprentice, and to what Ship he belongs; and upon Receipt of such Certificates, Protections shall be made and given, from Time to Time, for such Apprentice, till he attains the Age of 18 Years, without Fee or Stamp. *Ibid.*

37. Persons to whom Parish-Boys are put Apprentice by *Stat. 43 El.* may, with the Consent and Approbation of two or more Justices of the County, dwelling in or near the Parish where such poor Boy was bound Apprentice, or of the chief Officer of any City, &c. at the Request of the Master or Mistress, then living, of such Apprentice, or of their Executors, Administrators or Assigns, by Indenture, assign and turn over such poor Boy Apprentice to any Master or Owner of any such Ship, for and during the then remaining Time of his Apprenticeship: Such Indentures of Assignment to be registered, and Certificates given and transmitted by such Collectors, as above, *See* 36. and Protections till the Age of 18, as aforesaid. *Ibid.*

38. Such Apprentices, under the Age of 18, are exempted from Payment of 6 d. per Month to *Greenwich-Hospital*, imposed by *Stat. 7 & 8 W. 3.* for Encouragement of Seamen, &c. *Ibid.*

39. Masters and Owners of Vessels of 30 Ton to 50 Ton, are obliged to take one such Apprentice, and one more for the

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the next 50 Ton, and one more for each 100 Ton above 100 Ton; on Refusal, to forfeit 10 *l.* for the Use of the Poor of the Parish from whence such Boy was bound Apprentice. *Ibid.*

40. Every such Master or Owner, after his Arrival into any such Port, and before he clears out, shall give an Account in Writing, under his Hand, to the Collector, of the Names and Number of such Apprentices as are then remaining in his Service. *Ibid.*

41. Such Apprentices shall be conveyed to the Ports to which their Masters belong, by the Churchwardens and Overseers of the Poor, and their Agents, the Charges to be as in Stat. 11 & 12 *W.* 3. *cap.* 18. that is, to be ordered by the said Justices, and to be paid forthwith by the chief Constable of the Division out of the Gaol and *Marshalsea* Money. *Ibid.*

42. Counterparts of such Indentures to be executed by such Masters, shall be sealed and executed in the Presence of, and attested by such Collector, and the Constable or other Officer who so conveys such Apprentice; which last mentioned Officers shall convey such Counterparts to such Churchwardens and Overseers, by the same Ways and Means as such Apprentice was conveyed. *Ibid.*

43. Two or more Justices, &c. and all Mayors, and other Head Officers of any City, &c. in or near adjoining to such Port to which such Vessel shall arrive, have full Power to inquire into, examine, hear and determine all Complaints of hard or ill Usage from Masters to such Apprentices, and also of all such as voluntarily put themselves Apprentices to the Sea-Service, as aforesaid, and to make such Orders therein, as now they are enabled by Law to do in other Cases between Masters and Apprentices. *Ibid.*

44. Every such Collector shall keep a Register, containing the Number and Burden of such Ships, the Names of Masters or Owners, and of such Apprentices, and from what Parishes or Places they were sent; and shall transmit true Copies signed by them to the Quarter-Sessions, or to such Cities, &c. Parishes or Places, as often as reasonably required, without Fee or Reward: And for every Neglect or Refusal, forfeit 5 *l.* for the Use of the Poor of the Parish from whence such Boy was bound Apprentice. *Ibid.*

45. Every Custom-house Officer, at each Port, shall insert, from Time to Time, at the Time of their Cocquets, the Number of Men and Boys on board the respective Ships, at their going out of Ports, particularly describing Apprentices by Name, Age, and Date of Indenture, without Fee, &c. *Ibid.*

46. Persons who voluntarily, and of their own Accord, bind themselves to such Masters or Owners, shall not be impressed into the Sea-Service, during three Years, from the Date of

their Indentures; which are to be registered, and Certificates thereof given and transmitted by such Collector, as aforesaid: Upon Receipt of which Certificates, Protections shall be given without Fee. *Ibid.* But see below, Sect. 50.

47. When such Apprentices are in the King's Service, their Masters are intitled to their Wages. *Ibid.*

48. All Penalties and Forfeitures by this Act shall be levied by Warrant under the Hands and Seals of two or more Justices of the same County, City, &c. by Distress and Sale of Offenders Goods and Chattels. *Ibid.*

49. No such Master shall be obliged to take any such Apprentice under the Age of 13 Years, or who shall not appear to be fitly qualified as to Health and Strength of Body for that Service; and the Widow, Executor or Administrator of such Master, have such Power to assign them to other Masters who have not their Complement as is given by the said Act to those who have taken Apprentices, pursuant to Stat. 43 Eliz. Stat. 4 Ann. cap. 19. Sect. 16.

50. No Person of 18 Years of Age shall have the Protection (mentioned above; Sect. 46.) who shall have been in any Sea-Service, before the Time they bound themselves Apprentices. *Ibid.*

51. Any Apprentice or hired Servant to a Person who resides in any Place by Certificate, and not having afterwards gained a legal Settlement in such Place, such Apprentice or Servant, by Virtue of such Binding or Service, shall not gain a Settlement, but shall have their Settlement in such Place, as if they had not been so bound or hired. Stat. 12 Ann. Stat. 1. cap. 18. Sect. 2.

An Indenture for placing out a poor Boy Apprentice.

5 El. c. 4.

52. **T**HIS Indenture made, &c. between A. B. and C. D. Churchwardens of the Parish of, &c. in the County of, &c. and E. F. and G. H. Overseers of the Poor of the same Parish, of the one Part, and J. K. of, &c. of the other Part, Witnesseth, that the said Churchwardens and Overseers, by and with the Consent of two of his Majesty's Justices of the Peace of the said County, whose Names are hereunto subscribed (according to the Form of the Statute made in the 43d Year of the Reign of Queen Elizabeth) have put and bound, and by these Presents do put out and bind L. M. a poor Child of the said Parish, Apprentice to the said J. K. with him to dwell and serve from the Day of the Date of these Presents, until the said Apprentice shall accomplish the Age of 24 Years, during all which Term the said Apprentice his said Master faithfully shall serve in all lawful Business,

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Businesses, according to his Power, Wit and Ability, and honestly, orderly and obediently in all Things demean and behave himself towards his said Master, and all his, during the said Term; and the said J. K. for himself, his Executors and Administrators, doth covenant and grant to and with the said Churchwardens and Overseers, and every of them, and their and every of their Successors for the Time being, by these Presents, that he the said J. K. the said Apprentice in the Trade of, &c. which he now useth, shall and will teach and instruct, or cause to be well and sufficiently taught and instructed, and during all the Term aforesaid, find, provide and allow unto the said Apprentice, meet, competent and sufficient Meat, Drink and Apparel, Lodging, Washing, and all other Things necessary and fit for an Apprentice; and also shall and will so provide for the said Apprentice, that he be not any Way a Charge to the said Parish of, &c. or Parishioners of the same; but of and from all Charges shall save the said Parish harmless and indemnified, during the said Term; and at the End of the said Term shall and will make, provide, allow and deliver unto the said Apprentice double Apparel of all Sorts, good and new, (that is to say) one good Suit for the Holydays, and another for the Working Days. In Witness, &c.

We J. S. and W. N. Esquires, two of his Majesty's Justices of the Peace for the County aforesaid, do hereby declare our Consent to the putting forth of the abovesaid L. M. Apprentice to the said J. K. according to the Intent and Meaning of the Indenture above written.

J. S.
W. N.

A Warrant against an idle and disorderly Apprentice.

To the Constable of the Parish of, &c.

53. Essex, to wit. **W** Hereas Complaint hath been made unto me by A. B. of, &c. Blacksmith, that C. D. his Apprentice, is not only a negligent, but a stubborn and disorderly Servant, and very much misbehaves himself towards the said A. B. These are therefore to command you to bring the said C. D. before me, or some other Justice of the Peace for the said County, to be examined in the Premises, and that such Order may be made therein as to Justice appertains. Given, &c.

El. c. 4.
He may be sent to the House of Correction.

A Warrant against an Apprentice for departing from his Master.

To all Constables of the Parish of, &c.

5 El. c. 4.
The Justice
may grant his
Warrant upon
Complaint of
the Master,
and he may
reconcile the
Matter if he
can; but I do
not see how he can punish an Apprentice by Indenture; the Sessions may.

54. Berks, to wit. **W** Hereas Complaint hath been made unto me by L. M. K. &c. that C. D. his Apprentice, hath lately departed from his Master contrary to Law: These are therefore in his Majesty's Name to command you to apprehend the said C. D. and bring him before me, or some other Justice of Peace for this County, to answer the Premises. Given under my Hand and Seal, &c.

An Information will not lie in this Case, but an Action of the Case against him who receives an Apprentice by Indenture.

A Warrant against a Master for abusing his Apprentice.

To the Constable of, &c.

6 El. c. 4.

55. Berks, to wit. **W** Hereas Complaint hath been made unto me by J. K. Apprentice to L. M. of the Parish of, &c. Taylor, that the said L. M. doth not allow unto his said Apprentice sufficient Meat, Drink and Apparel, and hath often immoderately corrected him without any just Cause, &c. These are therefore (as in the former Warrant.)

This Warrant must be made by the Justices where the Master dwelleth, or Mayor or Head Officer of a Corporation; and if the Justice cannot reconcile them, he may bind the Master to the next Sessions, whereof four Justices (*Quorum unus*) may discharge the Apprentice under their Hands and Seals.

The Discharge.

6 El. c. 5.

56. Berks, to wit. **W** E J. S. N. W. S. B. G. T. four of his Majesty's Justices of the Peace (whereof J. S. is of the Quorum) for the County aforesaid, having heard and examined the Matter in Difference between J. N.

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an Apprentice to R. G. of, &c. and it appearing to us, that the said R. G. hath not allowed his said Apprentice sufficient Meat, &c. and hath several Times beaten him very immoderately without any just Occasion; we do therefore for the Cause aforesaid discharge the said J. N. from his said Apprenticeship, and do hereby under our respective Hands and Seals adjudge and declare, that the said J. N. is discharged from being any longer an Apprentice to the said R. G. Witness our Hands and Seals, &c.

This Discharge must be inrolled by the Clerk of the Peace, or Town-Clerk, which shall be good against the Master, his Executors and Administrators.

A Warrant against a Master, to levy the Sum of Ten Pounds for refusing to take an Apprentice.

To the Churchwardens and Overseers of the Poor of the Parish of, &c.

57. Berks, to wit. **W** Hereas J. E. a poor Male Child, was, 8 & 9 W. 3. by the Churchwardens and Overseers of the Poor of the Parish of, &c. by and with the Consent of J. S. and J. F. two of his Majesty's Justices of the Peace for the said County, lately placed and bound by Indenture as an Apprentice to L. M. of, &c. to dwell with him from the Date of the said Indenture, until the said J. F. should attain his Age of 24 Years, pursuant to the Statute in that Case made and provided: And whereas it appears unto us upon the Oath of T. S. one of the Churchwardens of the Parish of, &c. that the said L. M. doth refuse to receive the said J. E. and provide for him as by Law he ought to do, and doth refuse to seal a Counterpart of the said Indenture: These are therefore in his Majesty's Name to command you, &c. to levy the Sum of Ten Pounds by Distress and Sale of the Goods of the said L. M. for the Use of the Poor of the Parish, &c. and hereof fail not. Given under our Hands and Seals, &c.

c. 30.
Two Justices.

Where the Offence was committed.

C H A P. XXXVI.

Appeals.

Appeals may
be made to
Quarter-Ses-
sions.

Justices may
order Costs on
Appeals.

If live in an-
other County,
the Justice, on
Copy of the
Order, may
make a War-
rant, &c.

No Appeal to
be proceeded
on till Notice
given, &c.

1. **A**PPEALS may be brought to the Quarter-Sessions by any griev'd with any Rate or Tax, or other Act done by Churchwardens and other Persons, or by Justices of Peace out of Sessions. In Cases of Settlements and Removal of the Poor, the Justices in their General Sessions shall make such Order therein, as they shall think convenient, and the same shall conclude and bind all Parties. 43 *El. c. 2.*

2. Justices upon any Appeal in their General or Quarter-Sessions, concerning the Settlement of any Poor, or upon Proof made of Notice given of such Appeal, though not afterwards prosecuted, shall order to the Party, for whom the Appeal shall be determined, or to whom such Notice was given, such Costs and Charges in the Law as they shall think reasonable. 8 & 9 *W. 3. c. 30.* And if the Person ordered to pay such Costs live out of the Jurisdiction of the Court, any Justice of the County, &c. where he lives, on producing a Copy of the said Order, and proving the same by one credible Witness, by Warrant under his Hand and Seal, is to cause the Money mentioned in the said Order to be levied by Distress and Sale of the Goods of the Person ordered to pay; and if no Distress can be had, may commit such Person to the common Gaol for twenty Days. *Ibid.*

3. No Appeal from any Order for Removal of a poor Person shall be proceeded upon at Quarter-Sessions, unless reasonable Notice be given by the Officers of the Parish making the Appeal to the Officers of the Parish from which such poor Person shall be removed; and if reasonable Time of Notice be not given, Justices may adjourn the Appeal to the next Quarter-Sessions: And if the Sessions determine the Appeal in Favour of the Appellant, they are to order such Appellant so much Money as shall be reasonably expended by the Parish, on whose Behalf the Appeal was made, for the Relief of the poor Person between the Time of undue Removal and the Determination of the Appeal, to be recovered in like manner as Costs and Charges upon Appeal 9 *Geo. 1. c. 7.*

4. No Appeal lies from the Quarter-Sessions to the Judges of Assize, &c. 2 *Bulst. 355.* Where there is a Town Corporate that has a Sessions of their own, if the Parties will appeal from an Order made there, they must appeal to the County Sessions, and not to their own Sessions. Defendant being Over-

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seer of *Westbury* in *Wilts*, and his Accounts being allowed and confirmed; several Years afterwards the Parish appeals against his Accounts; the Statute being silent as to the Time, the Parish may appeal at any Time. It should seem by a Case No Time li-
between the Queen and the Parish of *St. Giles*, *Cases 2. Anne* mited to an
259, 260, that an Appeal upon an Order for levying a Poor's Appeal.
Rate, need not be to the next Quarter-Sessions.

5. All Appeals must be determined at the Sessions in that County or Place wherein the Parish doth lie, from whence the poor Man is removed, and not else. The next Sessions after an Order made, and an Appeal brought, adjourned the Appeal to the next Sessions following, then they made an Order; and Appeal must
upon a Motion to quash it, for that the Appeal ought to be be lodged at
determined the very next Sessions, and not at an adjourned Ses- next Sessions,
sions, it was adjudged, that the Appeal must be lodged at the but may be de-
next Sessions, but may be determined at an adjourned Sessions. termined at an
Salk. 605. Inhab. King's Langley v. Inhab. par. St. Peter in adjourned Ses-
St. Alban's, 1 Ld. Raym. 481. S. C. sions.

6. A Determination on an Appeal to the Sessions is only binding between the Parties to the Appeal. *Inter Bedenham & Kingston Bowsey, Hill. 11 W. 3. B. R. Salk. 486.*

A Notice of Appeal.

To the Churchwardens and Overseers of, &c.

7. **T**HIS is to inform you, and every of you, that we, the Churchwardens and Overseers of the Poor of the Parish of, &c. do intend at the next Quarter-Sessions of the Peace to be holden for the County of, &c. to commence and prosecute, an Appeal against you, the Churchwardens and Overseers of the Poor of the Parish of, &c. aforesaid, for and concerning the unjust Removal of A. B. from your said Parish of, &c. to our Parish of, &c. of which you are to take due Notice. Witness, &c.

C H A P. XXXVII.

Bastards.

1. **A**S for the Derivation of the Word, we have it from Bastards. the Germans, who more properly write it *Bastart*; for *Bas* signifies in that, and in *French*, and other Languages (*low or mean*) and (*Start*) in the *Saxon* Tongue signifies (*risen*;) So that the Words import, *meanly risen*, or *basely born*.

Who are Bastards by the Civil and Canon Law.

born. By the Civil and Canon Law, a Child born before Marriage might inherit, if the Marriage followed; and this was attempted *Anno 20 Hen. 3.* to be made the Law of *England*: The Bishops all concurred, because it was the Law of the Church; but the Temporal Lords would not admit it, crying out one and all, *Nolumus Leges Angliæ mutari*; for 'tis against a Rule in Law, *viz. Qui ex damnato coitu nascuntur, inter liberos non computantur*; which is true as to the Inheritance, but 'tis not so as to making a Marriage good, as where it was between a Man and his own Sister's Bastard. If the Wife live in Adultery, and hath Issue by another Man, yet, if by Possibility the Husband had Access to her, it shall be presumed his Child. And if the Husband and Wife consent to live separate, the Children born after Separation shall be taken to be legitimate, because the Access of the Husband shall be presumed, unless it be otherwise found. *Salk. 122.* So if the Child is born but three Days after the Marriage, it is legitimate. Children born after a Divorce are Bastards; and unless Cohabitation can be proved, it shall not be intended. *Cases 2. Anne 106.* Parishes of *St. George, Southwark,* and *St. Margaret, Westminster.* A Bastard was begotten on a Mariner's Wife, and born during his Absence: The Order recited that he was out of the Realm at the Time when the Child was begotten and born. This is ill, because it does not say that the Husband was beyond Sea forty Weeks before the Birth of the Child. It is not to be said that he was beyond Sea at the Time of the Conception, for that cannot be certainly known. *Carth. 469, 470. Rex v. Alberton, 1 Ld. Raym. 395.*

By the Civil Law a Bastard is incapable of all Testamentary Benefit, &c. How he is capable by the Common and Statute Law, &c.

2. By the Civil Law a Bastard is made incapable of all Testamentary Benefit, either from Father or Mother; but by a Canon Law he may take by a Devise any reasonable Competency for his Maintenance. But both by the Common Law and Statute he is allowed to be capable of a Maintenance; for by the one, any Man is permitted to give his Bastard Lands or Tenements by his Will, and the other hath provided for his convenient Maintenance and Relief by the Parents; and yet he is of no Consideration in the Common Law; for he is not accounted of the Blood so as to raise an Use, and therefore natural Affection is not a sufficient Consideration in such a Case. *18 El. c. 3. Dyer 374.*

Not included in the Statute of Wills, &c.

3. He is not comprehended by the Name of a Child or Children in the Statute of Wills; he can have no Heir, but of his very Body; and if he dies without such Heir, his Lands shall escheat: And yet in some Cases a Bastard may gain the Right of Inheritance against a lawful Son; as if a Man who is seised in Fee hath an eldest Son who is a Bastard, and the youngest legitimate, by one and the same Woman, then the Father

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Father dies, and the Bastard enters, and hath Issue, and dieth without being disturbed in his Life-time by him who was legitimate, he can never afterwards recover the Land: Nor can any collateral Heir, in Case there had been no such Son, because the Rule is, *Non est justum aliquem post mortem facere Bastardum, qui toto Tempore vitæ pro legitimo habebatur.* 8 Rep. 101. 1 Inst. 284. But there are several Acts by which the legitimate Son may interrupt the Possession of the Bastard; as if he enter or take any Manner of Profits by putting in his Cattle upon the Ground, or otherwise, though no express Words of Entry are used.

4. As to the Time of the Birth of a Child, 'tis usually within nine Months and ten Days after the Conception, accounting 30 Days to the Month; yet by Accidents the Birth may be occasioned sooner or later; as where a Child was born eight Days after the forty Weeks, it was held legitimate; but in this Case there were these Circumstances, viz. the Husband was sick but one Day before he died, and the Wife was exposed to cold, and hard Usage by her Father-in-law, and this occasioned her Travel for six Weeks; but as soon as she was taken into a House, and was supplied with Necessaries, she was delivered in twenty-four Hours. 1 Rol. Abr. 356. 2 Cro. 541.

5. Where a Suit is commenced in a Temporal Court for an Inheritance, and the Defendant pleads in Disability that the Plaintiff is a Bastard, this must be tried in the Spiritual Court, and this is called general Bastardy, for the Issue must be joined upon it, and transmitted by Writ to the Bishop, who is to try it in his Consistory Court, not according to the Canon Law, but pursuant to the Rules of the Common Law; for these Laws differ in this Matter, as above, §. 1. When the Matter is tried by the Bishop, he is to certify it under his Seal to the King's Justices, which Certificate is conclusive to them, for they are to give Judgment as 'tis found there. But where the Principal Matter of the Suit is concerning Bastardy itself, as if an Action of Slander is brought for calling the Plaintiff Bastard, and the Defendant justifies that he is a Bastard, it shall be tried by the Country; and this is called Special Bastardy.

6. The Substance of the Law concerning Bastards, and what I have to add further concerning them, may be reduced under five Heads, and some Cases relating thereto. 1st, Who is a Bastard. 2dly, Of what Bastards the Justices, Sessions, or Overseers are to take Cognizance. 3dly, What may be done to indemnify the Parish, before the Child be born. 4thly, What ought to be done after the Child is born. 5thly, Of proceeding on Appeal and Certiorari.

Who are Bastards.

7. Of which in their Order, and first, all born out of lawful Wedlock are Bastards. Issue that is born forty Weeks and eight Days after the Death or Departure of the Father is no Bastard. *Cro. Jac.* 541. *Also* cont. *Bowtrel*, S. C. *Godh.* 281. S. C. *Palm.* 9. Though some Books hold forty Weeks to be the latest Time for the Birth of legitimate Issue. *Co. Litt.* 123. If a Man be divorced, *Causa Frigiditatis*, from his first Wife, and after marries another, and hath Issue, it is no Bastard. *Moor* 225, *Webber* cont. *Bury*, S. C. *Plowd.* 366. S. C. 2 *Leonard* 166. S. C. 1 *And.* 185. If one marry a second Wife, the first living, the Issue by the second Wife is a Bastard, because the Marriage was void. 18 *H.* 6. 13. 18 *Ed.* 4. 30, &c. The Issue of a Marriage between Persons within the Levitical Degrees is no Bastard, till the Parties are divorced; for the Marriage is not void but voidable, be they never so nearly related. 18 *Hen.* 6. *cap.* 34. 18 *H.* 6. 32, &c. Issue born before Marriage, though the Parties after intermarry, is a Bastard. 47 *Ed.* 3. 14 *b.* &c. Though a Child be born during Marriage, yet if the Woman's Husband was gelt, the Issue is a Bastard. 1 *Roll's Abr.* 351. So if born after her Husband had been Years beyond Sea, or not within the four Seas during the Woman's being with Child, 7 *H.* 4. 19. and see above, §. 1. Or if the Husband be less than 14 Years old. 1 *H.* 6. 3, 8, &c. Or if she was visibly big with Child at the Time of her Marriage. 1 *Roll's Abr.* 359. *Salk.* 120. *Reg.* cont. *Murrey*. The Issue also is bastardized by the Parents being divorced a *Vinculo Matrimonii*, because in all those Divorces the Marriage is declared to have been originally null and void; but this Divorce being pronounced in the Spiritual Court *pro Peccatis*, after the Death of the Parties the Marriage cannot be questioned. *Co. Litt.* 235. 39 *Ed.* 3. 316, &c. If two are divorced a *Mensa & Thoro*, the Issue born after, shall be presumed to be a Bastard, unless it be proved that the Parties did converse together. *Salk.* 123. The Parishes of *St. George, Southwark*, and *St. Margaret, Westminster*. But if Husband and Wife live separately by Consent, and yet she is delivered of a Child, the Child shall not be deemed a Bastard, till it be proved that the Husband had no Access to his Wife. *Id. Ibid.*

Of what Bastards Justices are to take Cognizance.

8. Secondly, Of what Bastards the Justices, and what Justices, and how, either at the Sessions or elsewhere, or the Overseers are to take Cognizance. By the enacting Part of the Stat. of 18 *Eliz.* c. 3. it appears, that no Power is given, but only over the Bastards of People unable to maintain them, and that for the Sake of indemnifying the Parish, and agreeable to this are many Judgments in our Books; and the very Words of the Order, which says, *that the Child is likely to be-*

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come chargeable to the Parish, sufficiently shew they have no Jurisdiction of others. *Cro. Car.* 436. *Salter* cont. *Brown*, 2 *Bull.* 343. *Bowber* cont. *Panter*. Having a Bastard is not punishable by Stat. 18 *Eliz.* unless it be chargeable to the Parish. *Comb.* 434. One of the Justices, if it be examined by two Justices, must be of the *Quorum*, and though the Stat. 18 *Eliz.* c. 3. uses the Words in or next the Limits of the Parish-Church where such Child shall be born, yet may two Justices next to the Parish examine the Matter. 2 *Sid.* 222. *Rex* cont. *Sharp*. 3 *Keb.* 383. *Rex* cont. *Sennings*. If a Man be adjudged, by two Justices, to be the Father of a Bastard, he is estopped against all the World to say the contrary; and a Man may justify the calling him so. *Thornton* and *Pickering* cited 1 *Ld. Raym.* 394.

9. Before the Statute of 3 *Car.* 1. c. 3. the Justices of the Sessions had no Authority to meddle in the Case of Bastardy, till the two next Justices, according to the Stat. 18 *Eliz.* c. 3. had made an Order therein, and then, and not before, (the Party refusing to perform the Order, and giving reasonable Security to appear at the next Sessions, and abide such Order as the Justices there, or the major Part of them, should make, &c.) the Justices of the Sessions might make a new Order, otherwise not. But now, by the Stat. 3 *Car.* 1. c. 4. the Justices of the Sessions have a Power and Authority originally to make an Order in the Case of Bastardy; for the Words of the Statute are, *viz.* That all Justices of Peace, within their several Limits and Precincts, and in their several Sessions, may do and execute all Things concerning that Part of the Statute concerning Bastards begotten out of lawful Matrimony, that by Justices of the Peace in their several Counties were by the said Statute limited to be done. *Cro. Car.* 470. *Slate's Case*.

10. Thirdly, What the Justices and Overseers may do to prevent any Damage to the Parish, from a Bastard likely to be born and chargeable to the Parish. The first Thing to be done, if by Law she cannot be removed to the Place of her last legal Settlement, is to examine the Woman, Who is the Father of the Child with which she goes? And this may be done by one Justice, on the Oath of the Woman: But after she is delivered, she must be again examined by two Justices, whereof one must be of the *Quorum*; and it is not contrary to Law, to examine the Woman on Oath, because none but she can tell who is the Father. *Dalt. Justice* 40. And this ought to be done before the Justice can send his Warrant to apprehend the reputed Father. But by the new Stat. she cannot be examined unless she thinks fit, until after the Birth; see below, §. 13.

What the Justices and Overseers may do to prevent any Damage to the Parish.

Not by Compulsion before the Delivery, as expressly provided by the Stat. 6 G. 2. See below, Sect. 51, &c.

A Woman's

A Woman's Examination before the Child's Birth.

11. Midd', ff. **T**HE Examination of E. W. single Woman, taken before me J. S. Esq; one of his Majesty's Justices of the Peace for the said County, this First Day of May, Anno Domini 1732, who on her Oath says, that she is a hired Servant to T. G. of, &c. Cordwainer, at the yearly Wages of three Pounds per Ann. and has continued in her said Service from the 10th Day of April 1729. And further saith, that in the Month of last November, as she, this Examinant, was making one of her Master's Beds in a back Room, on R. G. Apothecary, living next Door to her Master's House, came into the said back Room to her, no other Person being present, and promising great Kindness to her, pre-vailed with her, and then had the carnal Knowledge of her Body, once on the said Bed, and has had the like three several Times since; and that the said R. G. did get her with Child of the Child or Children she now goeth with and is pregnant of, which said Child or Children when born, is and are likely to be a Bastard or Bastards, and to become chargeable to the Parish of S. And this Examinant further saith, that he the said R. G. and no other Person, is the Father of the said Child or Children.

Jur' Die & Anno
sup'd' coram J. S.

E. W.

After Examination the Justice is to make out a Warrant.

12. The Justice of Peace, after having taken the Examination, must then make out a Warrant on that, for the apprehending the Person so charged, to the Constable, who though he is not named in the Statute, nor by it appointed to execute these Warrants, yet the Justice may command him to do it; for as at Common Law the Constables were subordinate to the Conservators of the Peace, so are they now the proper Officers of the Justices of the Peace. *Salk. 380. Reg. cont. Wyat.*

The Warrant against the reputed Father of a Bastard Child, before it is born.

To the Constable, Headborough, &c.

13. Midd', ff. **W**Hereas on the voluntary Examination of E. W. &c. single Woman, taken this Day before me on Oath, it appeareth, that she is now with Child

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Child of a Bastard Child or Children, which when born is or are likely to become chargeable to the Parish of S. And whereas at the Examination of the said E. W. on Oath before me, she the said E. W. did charge R. G. of, &c. Apothecary, to have begotten the same: These are therefore in his Majesty's Name, to command you, or some or one of you, to apprehend the said R. G. and bring him before me, or some other of his Majesty's Justices of the Peace of the said County, to be examined touching the Premises, and to be further dealt with according to Law. Given under my Hand and Seal, &c.

Note; This Warrant before the Birth is given by Stat. 6 Geo. 2. c. 31. but the Woman is not compellable to be examined till a Month after Delivery. See below, §. 51, 52, 53, 54. 3 Keb. Rex ver. Brown. Justices may take Security of the reputed Father before the Delivery of the Woman; by the Equity of the Stat. 18 El. c. 3. per Twissden Justice, settled by Stat. 6 G. 2. c. 31.

A Warrant against the Father of a Bastard Child after it is born.

14. Middlesex, **W** Hereas upon the Examination of A. P. to wit. *single Woman, taken in Writing upon Oath before me, one of his Majesty's Justices of the Peace for the said County, it appeareth, that the said A. P. hath lately been delivered of a Bastard Child, and that she doth charge J. L. of with having gotten her with Child, which Child is chargeable (or likely to become chargeable, as the Case is) to the Parish of*

These are therefore, upon the Complaint of the Overseers of the Poor of the said Parish of to require you to bring the said J. L. before me, or some other of his Majesty's Justices of the Peace, to be examined and dealt with according to Law. Given, &c.

A Commitment of the Father of a Bastard Child.

To the Keeper of the Gaol for the County of

15. Middlesex, **W** Hereas upon Examination of A. P. *single Woman, taken in Writing upon Oath before me, one of his Majesty's Justices of the Peace for the said County, it appeareth, that the said A. P. hath lately been delivered of a Bastard Child, and that she doth charge J. L. of*

of *with having gotten her with Child, which Child is chargeable (or likely to become chargeable, as the Case is) to the Parish of*

And whereas the said J. L. doth refuse to give Security to indemnify the said Parish of *or to enter into a Recognizance, with sufficient Surety to appear at the next General Sessions of the Peace, to be holden for the said County, and to abide and perform such Order as shall be made in Pursuance of the Statutes in such Case made and provided.*

These are therefore to require you to receive the said J. L. into your Custody, and him safely keep until discharged by due Course of Law. Given, &c.

16. The Party may, if he will, come before the Justice, and by Recognizance be bound with Sureties for his Appearance, and then a Superfedeas shall be sent to the above-mentioned Warrant. When the Person is before the Justice, he must enter into a Recognizance with sufficient Sureties, for his Appearance at the next Sessions, when he may be continued upon the Recognizance till the Woman is delivered of the Child; and if he refuse to enter into such Recognizance, he may be committed. The Condition of the Recognizance may be either for the putative Father's Appearance at the next Sessions, or at the next Sessions after the Child shall be born, or he may give Bond to indemnify the Parish.

Recognizance for Bastardy, where two are Manucaptors for the Man in Custody.

17. Middlesex, **B**E it remembered, that on the tenth Day of to wit. **M**ay in the fourth Year of the Reign, &c. and in the Year of our Lord 1733, M. R. of L. in the County aforesaid, Victualler, and E. M. of L. aforesaid, Gent. came before me J. S. one of his Majesty's Justices of the Peace for the said County, and took in Hand, and each of them took in Hand for N. T. of the Parish of B. in the County aforesaid, Taylor, under the Penalty of twenty Pounds of lawful Money of Great Britain; which said Sums they, and each of them acknowledged to owe to the said Lord the King, and granted to be made and levied of their Goods and Chattels, Lands and Tenements, to the Use and Beboof of the said Lord the King, his Heirs and Successors, if the aforesaid N. T. shall make Default in the Condition under-written.

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The Condition of a Recognizance of one charged to be the Father of a Bastard Child before its Birth, to appear at the Sessions.

18. Midd. ff. **T**HE Condition of this Recognizance is such, that if N. T. aforesaid do personally appear at the next general Quarter-Sessions of the Peace to be holden for the said County of M. then and there to abide and perform such Order as shall be made upon the Complaint of the Overseers of the Poor of the Parish of B. for getting S. T. single Woman with Child, which Child is likely to be born a Bastard, and to be chargeable to the said Parish of B. (or, as the Case is, for begetting a Bastard born in the said Parish on the Body of S. T. single Woman, which Bastard Child is become chargeable to the said Parish;) that then this Recognizance shall be void, or else remain in full Force taken and acknowledged the Day of Sec. before me J. S.

The Party accused may give a Bond to indemnify the Parish.

If the putative Father should refuse to give Sureties for his Appearance, or Bond to indemnify the Parish, then he is to be committed.

A Warrant against the Father of a Bastard Child before the Birth.

19. Midd. ff. **W**Hereas upon the Examination of A. P. single Woman, taken in Writing upon Oath before me, one of his Majesty's Justices of the Peace for the said County, it appeareth, that the said A. P. is now with Child, and that she doth charge J. L. of with having gotten her with Child, which Child is likely to be born a Bastard, and to be chargeable to the Parish of

These are therefore upon the Complaint of the Overseers of the Poor of the said Parish of to require you to bring the said J. L. before me, or some other of his Majesty's Justices of the Peace, to be examined and dealt with according to Law. Given, &c.

ably, Of what may be done after the Child is born, and of the Punishment of the Parents.

What may be done after the Child is born.

20. The first Thing to be done after the Child is born, is again to examine the Mother as to the Father, and this must be done by the express Words of the Stat. of 18 EL. c. 3. by two Justices of the Peace, and one of them must be of the *Quorum*; and it is a judicial Act, and ought to be done in the Presence of both the Justices, and not by one singly, and by him reported to the other. *Modern Cases* 180. *Regina cont. West.* But an Order for keeping a Bastard Child shall not be quashed for want of saying, *Quor. unus, &c.* *Comber.* 63.

The Form of an Examination after the Birth of a Bastard Child.

21. Midd. ff. **T**HE Examination of S. S. of, &c. taken before us, J. F. and L. M. Esqrs. two of his Majesty's Justices of the Peace for the said County, (whereof J. F. is of the *Quorum*) the 10th Day of May, Anno Dom. 1731, who upon her Oath saith, that the Female Bastard Child, of which she was delivered the second Day of April last, about Three a-Clock in the Afternoon, in the Parish of, &c. was brought by R. G. late Commander of his Majesty's Ship the Kingston, who cruizing off the Coast of D. and coming ashore there, frequented this Examinant's House (she keeping a *Viſitalling-House*) and there became acquainted with her, and had the carnal Knowledge of her Body: And this Examinant further upon Oath saith, that he the said R. G. and no other Person whatsoever, is the only true and natural Father of her said Child, of which she was delivered as aforesaid.

Sworn the Day and Year
aforesaid, J. F. L. M.

S. S.

Justices must convene the putative Father before they make Order.

22. The Justices, by the Act 18 EL. c. 3. being to make such Order, as they shall think fit, both for the providing for the Child, the Discharge of the Parish, and also the Punishment of the Parents, in Justice and Prudence ought not to proceed to do it, 'till they have convened the putative Father before them, especially now that daily Experience shews, that many People are wrongfully accused in these Cases.

A Warrant

riſh of

A Warrant to cause the Mother and reputed Father to appear.

To all Constables, &c.

23. Midd. ff. **F**Orasmuch as we (two of his Majesty's Justices of Peace for the County of Middlesex, whereof A. B. is of the Quorum) are informed, that A. B. of the Parish of R. in the County aforesaid (within the said Parish) hath lately been delivered of a Bastard Child yet living, and chargeable to the Parish aforesaid; and forasmuch as the said A. B. upon her Examination taken, hath charged R. R. of, &c. to have gotten the said Child: These are therefore in his Majesty's Name to command you, and every of you, that some or one of you do bring the said Woman before us, at the House of O. in T. in the County aforesaid, upon the 20th of May next at Ten of the Clock, in the Forenoon of the same Day, to be by us farther examined touching the Premises, and that you give Notice thereof unto the said R. R. (if conveniently you can) to the End, that he may likewise be at the Time and Place aforesaid, to make his lawful Defence herein (if he shall then see fit) and further, that you, or some or one of you, do give Notice to the several Persons whose Names are here under-written, that they, and every of them, are by us required to appear at the Time and Place aforesaid, to certify their several Knowledges touching the Premises, to the End that, upon the Examination of the Cause and Circumstances, we may take such Order therein, as to Justice doth appertain. And lastly, that what you shall do, in Execution of this our Precept, you do make known unto us, at the Time and Place aforesaid. Hereof fail not at your Perils. Given under our Hands and Seals at, &c.

A. B. of, &c. C. D. of, &c. E. F. of, &c.

An Order (of Bastardy, as I conceive) was quashed, 1. Because grounded on Affidavit, and not on an Examination viva voce. 2. Because to pay 6 l. for the Charges the Parish had been at, without shewing how, or for what. Comber. 103.

A Summons for the reputed Father to appear,
&c.

24. Midd. ff. **W**Hereas A. B. of, &c. single Woman, was on the Day of delivered of a Male Bastard Child, in the Parish of which Child is become chargeable to the said Parish,

Parish, and on her Oath hath charged you the said to have begotten the said Bastard Child on her Body: These are therefore in his Majesty's Name to require you the said personally to be and appear before us, two of his Majesty's Justices of the Peace, at the Vestry-Room of the Parish of on next, at of the Clock in the Forenoon, to shew Cause why you should not be adjudged the reputed Father of the said Male Bastard Child, and why upon the Complaint of the Churchwardens and Overseers of the Poor of the said Parish of we should not make an Order upon you the said as well for the Relief and Indemnity of the said Parish, touching the Premises, as for the keeping the said Male Bastard Child: And hereof you are not to fail. Given under our Hand, this Day of

1739.

A Warrant by two Justices, after a former Order to apprehend the Father of a Bastard Child, &c.

25. Midd. ff. **W** Hereas it doth appear by an Order under the Hands and Seals of us A. B. and C. D. two of his Majesty's Justices of the Peace for the County of Middlesex (Quorum unus) dwelling in the Parish of made upon the Complaint of the Churchwardens and Overseers of the Poor of the said Parish; as also upon the Oath of single Woman, that the said was on the Day of (here recite the Order)

These are therefore to will and require, and in his Majesty's Name strictly to charge and command you, and every of you, on Sight hereof, to apprehend the Body of the said and bring him before one of his Majesty's Justices of the Peace for the said County, to the End he may give good Security to perform the aforesaid Order, or else personally to appear at the next General Quarter-Sessions of the Peace to be holden for the said County, after he shall herewith be taken, there to abide and perform such Order as the Justices of the Peace in Court shall make touching the Premises, and be further dealt with according to Law. And hereof fail not at your Perils. Given, &c.

If not, then the Justices must proceed to make the Order.

26. If the Party do not so indemnify the Parish, the same two Justices must proceed to make an Order for the Security of the Parish, and though the 18 Eliz. c. 3. says, that they shall and may take Order at their Discretions for the Security of the Parish, yet the King's Bench having quashed many Orders, not only for Defect in Form, but also for the doing Things

Things set down drawing so expression was not being should be, till it was disallowed below, maintain ten Year be charged 172. 7 Style 15 reputed

27. B may maintain the Statute, contribute with Ch Linter. of the J 212, Re the Order Car. 21 Order, where 't having b next to t the Order the Order County by the C the Mon Books.

28. T putative become son, 1 M stices ma might b they had was ma gina con wife, b Cafe.

Things beyond the Limits of their Jurisdiction, I shall here set down such Rules as I find in our Books, concerning the drawing such Orders. It must be concerning a Bastard, and so expressed, and likely to become chargeable. An Exception was taken to an Order for keeping a Bastard Child, as not being pursuant to the Statute, the Order being, *till he should be no longer chargeable*; whereas by the Statute it should be, *till the Child be able to get his own Living*; this Exception was disallowed, and the Order confirmed. *Comber. 69.* See below, *Sett. 28.* It must appear how long the Father is to maintain it. An Order of Bastardy to pay till the Child be ten Years old, is not according to the Statute; for he may not be chargeable so long as till ten Years old. *Cases 2. Anne 172. The Queen v. Atkins, ibid. 178. The Queen v. Collins, Style 154. 1 Vent. 137.* It must directly affirm who is the reputed Father. *Sid. 363.*

Rules about making Orders, &c.

27. By the express Words of the Stat. c. 3. the Justices may make an Order to oblige the Father or Mother to maintain the Child: And no other Person being mentioned in the Statute, Orders for the putative Grandfather, or a Person to contribute, because he permitted a Soldier to get a Woman with Child, have been quashed. 4 *Keble 747. The King cont. Linter. 1 Vent. 310, Anonymous. Style 207, Anonymous.* One of the Justices must be of the Quorum, 18 *El. c. 3. 2 Sid. 212, Rex cont. Sharp,* and must be at the Time they make the Order in the County for which they are Justices. *Cro. Car. 213. arguendo in Heliar's Case.* It must appear by the Order, that they are the Justices next to the Parish Church where 'tis born, according to one Book, (*Style 154.*) but it having been since resolved, that next to the Parish Church and next to the Parish are the same, it sufficeth, if this appear in the Order; but there is no Doubt but it must be set forth in the Order, that the Justices were Justices of the Peace of that County where the Child was born. *Style 14.* It must appear by the Order, that the Child was born in the Parish to which the Money is ordered to be paid, by the better Opinion in the Books. *Style 14. 2 Keble 383.*

Rex v. Heslop, P. 7 G. 2. B. R.

28. The Order must contain a positive Adjudication of the putative Father, *Style 154.* and that the Child is likely to become chargeable to the Parish. 1 *Vent. 37, Rex cont. Nelson, 1 Mod. 20. cont. Salk. 475. Rex v. Matthews.* The Justices may order the Payment of a Sum in gross, because it might be to reimburse the Parish the extraordinary Charge they had been at, before the Order for the weekly Payments was made. 2 *Sid. 326. Rex cont. Hill. Salk. 124. Regina cont. Odam.* No Allowance can be made to the Midwife, but in Discharge of the Parish. 1 *Vent. 210, Sherman's Case.* And where it did not appear in the Order that the

Bastard Child was chargeable, or likely to become chargeable to the Parish, the Order was quashed. *Camber. 39. 1 Cr. 36. Sid. 222.* And it may in Cases of Bastard Children be always so alledged with great Truth, unless a competent Livelihood hath been actually settled upon them. So that it seems if the Midwife is not paid, the Justice may order the Payment of so much as she ought to have, to be made by the putative Father to the Churchwardens and Overseers, who shall pay it to the Midwife. Neither the Justices or Sessions have any Power in Case of Bastardy, but to indemnify the Parish; that is, only to oblige the putative Father to maintain the Child, as long as it is, or may be, chargeable to the Parish; for the Father may take the Child when he pleases, and maintain it himself. Orders therefore for the Payment of Money weekly, till the Child attain any certain Age, have been quashed. *2 Saund. 82. Richards & al. cont. Hodges. Salk. 121. Rex cont. Barebaker. 1 Vent. 48. Burwell's Case, S. C. 1 Mod. 20. 1 Vent. 210. Sherman's Case, &c.* Nay an Order has been quashed for ordering the Payment of Money weekly, because 'twas not said for so long Time as it continued chargeable to the Parish. *Style 14. 1.* An Order to make the weekly Payments on Monday (though the Week be not then expired) is well enough. *2.* So ever since *Stat. 43 Eliz.* to pay it to the Overseers. But *3.* The Order was quashed for false Grammar, We the said Justices doth adjudge. *Regina v. Weston, 2 Ld. Raym. 1197. 1 Salk. 122.*

29. It seems the Justices ought to order the Payments to be weekly, and not monthly. *2 Sid. 222. Rex cont. Sharp.* They may also order the putative Father to give Security for the Payments, but cannot, as it seems, order that he shall give such Security as the Churchwarden shall approve. *2 Keb. 300. the King v. Boniface.* If the Justices order that the Churchwardens and Overseers of the Poor shall seize of the Defendant's Goods, what they shall judge proper, to secure the Parish from the Maintenance of the Child, the Order shall be quashed; for by *Stat. 13 & 14 Car. 2. c. 12.* they have only Authority to make an Order to empower the Churchwardens and Overseers, &c. to seize what the Justices shall judge proper, and not what the Churchwardens, &c. shall judge proper, &c. *Regina v. Chaffey. 2 Ld. Raym. 858.* Justices of the Peace, before the Institution of Overseers, might order Money to be paid for the Relief of a Bastard to two or three of the Parish weekly, and now they may order it to be paid to the Overseers. *Salk. 122. Regina cont. Weston.* The Adjudication in the Order must be by both the Justices; and an Order was quashed, because it was, We the Justices doth adjudge. *Ibidem.* They may order the Father to pay in much weekly, or maintain the Child. *1 Kettle 570. Rex cont.*

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cont. Terry. An Order for one to keep a Bastard Child got on a married Woman, ought to rehearse, that the Father at the Time it was got was beyond Sea. 5 Mod. 419. Alinson cont. Spence. Rex v. Redding, Mich. 8 G. 2.

An Order for the reputed Father of a Bastard Child to discharge the Parish.

30. Midd. ff. **W** Hereas it hath appeared unto us, whose Hands are hereunto set, two of his Majesty's Justices of the Peace for the County of Middlesex (Quorum unus) dwelling in the Parish of within the Liberty of Westminster in the said County, as well upon the Complaint of the present Churchwardens and Overseers of the Poor of the said Parish, as also by the Oath of single Woman, that she the said was on delivered of a male Bastard Child, born of her Body in the said Parish of and that the said male Bastard Child is chargeable to the said Parish of

and likely so to continue: and further, that one A. B. did unlawfully beget the said male Bastard Child, so born as aforesaid, on the Body of the said And whereas it hath been proved to us upon Oath, that the said

hath been duly summoned to appear before us the said Justices, to the End we might examine into the Cause and Circumstances of the Premises: And whereas he the said

hath neglected to appear before us according to such Summons: Now upon the Examination of the Cause and Circumstances of the said Premises by the Oath of the said

the Mother, we the said Justices do hereby adjudge him the said to be the reputed Father of the said male Bastard Child, so born of the Body of the said

as aforesaid: And thereupon we do order, as well for the better Relief and keeping indemnified the said Parish of

as for the Sustentation and Relief of the said male Bastard Child, that the said shall and do forthwith, upon Notice of this our Order, pay, or cause to be paid, unto the present Churchwardens and Overseers of the Poor of the said Parish of or to some or one of them, the Sum of

of lawful Money of Great Britain, for and towards the lying in, and laying of the said

of the said male Bastard Child. And we do hereby also further order, that the said shall likewise

pay, or cause to be paid, unto the Churchwardens and Overseers of the Poor of the said Parish of for the

Time being, or to some or one of them, the Sum of

like lawful Money, by the Week, weekly, and

Or he the said A. B. hath appeared before us (as the Case is.)

every Week, from [unclear] for and towards the Keeping, Sustentation, and Maintenance of the said Child, for and during so long Time as the said male Bastard Child shall continue and be a Charge and Burthen, or likely so to be on the said Parish; and we do further order, that the said C. D. (the Mother) shall also pay, or cause to be paid to the said Churchwardens and Overseers of the Poor of the said Parish of [unclear] or to some or one of them, the Sum of [unclear] a Week, weekly, and every Week, for and towards the Maintenance of the said Child for and during so long Time as the said Child shall continue likely to be chargeable to the said Parish, in Case she doth not nurse and take Care of the said Child. Given under our Hands, &c.

An Order that the reputed Father of a Bastard Child shall pay two Shillings per Week, &c. and that the Mother shall keep it, is good and consistent. *Comber. 232.*

After Security given, Bastard becomes chargeable, Parish must put Bond in Suit.

31. If the Party charged with being the Father comply with the Order, and put in Security to indemnify the Parish, if after the Security given, the Child become chargeable to the Parish, the Justices of the Peace, or the Sessions, may not intermeddle, and the Parish have no Remedy but to sue the Sureties on their Bond. *2 Saunders's Rep. 80. Note; By 18 Eliz. cap. 3. an Order for Security could not be made until after Contempt in Point of Payment. Regina v. Chaffey, 2 Ld. Raym. 858. But it is now otherwise by Stat. 6 G. 2. cap. 31. post sect. 51. And Note, That when an Order is confirmed in B. R. an Attachment lies for Nonperformance of it, and therefore B. R. will not take Security of the Party for Performance of it. 2 L. Raym. ubi supra.*

The Father or Mother who will not obey the Order, committed, or give Security, &c.

32. If after the Order made and subscribed by the two Justices, either the Mother or reputed Father, upon Notice thereof, shall not for their Part observe and perform the said Order, then every such Person so making Default in performing of the said Order, are to be committed to the common Gaol, there to remain without Bail or Mainprize, except he, she or they shall put in sufficient Surety to perform the said Order, or else personally to appear at the next General Sessions of the Peace, to be holden in that County where such Order shall be taken, and also to abide such Order as the said Justices, or the major Part of them, then and there shall take in that Behalf, if they then and there shall take any; and that if at the said Sessions the Justices shall take no other Order, then to perform and abide by the Order before made. *18 E. 1. c. 3.*

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A Warrant to commit the reputed Father to Gaol, for not performing the Order of the two Justices, not putting in Security to appear at the Sessions.

33. **W** Hereas A. B. stands charged before us, C. D. and E. F. Esqrs. two of his Majesty's Justices of the Peace for the said County, whereof C. D. is of the Quorum, upon the Oath of G. H. single Woman, for being the Father of the male Bastard Child lately born of her Body, in the Parish of, &c. where it is now chargeable, of which said Bastard Child the said A. B. is by our Order duly executed adjudged the reputed Father: And whereas the said A. B. being duly served with the Copy of the said Order, doth refuse to perform the said Order, or to find sufficient Surety for his personal Appearance at the next Quarter-Sessions of the Peace holden for the said County, to abide such Order, or any other Order, as the Justices there present shall in that Behalf make: These are therefore to require you to arrest the Body of the said A. B. and to commit him to the common Gaol of the said County, until he shall be discharged by due Course of Law. Given under our Hands and Seals, &c.

34. If the Party will fulfil that Part of the Stat. which requires Security for his Appearance, the Justices shall take a Recognizance of him, the Condition of which must be in the Disjunctive, either to perform their Order, or to appear at the Sessions, and abide by such Order as shall there be made. Condition of the Recognizance must be in the disjunctive, &c.

18 El. c. 3. 2 Bulst. 349. Rex cont. Smith.

A Commitment of the Father of a Bastard Child,
&c.

To the Keeper of the Gaol for the County of

35. Middx. ff. **W** Hereas upon Examination of A. P. single Woman, taken in Writing upon Oath before A. B. one of his Majesty's Justices of the Peace for the said County, it appeareth, that the said A. P. is now with Child, and that she doth charge J. L. of with having gotten her with Child, which Child is likely to be born a Bastard, and to be chargeable to the Parish of And whereas the said J. L. doth refuse to give Security to indemnify the said Parish, or to enter into a Recognizance with sufficient Surety, to appear at the next General Sessions of the Peace,

to be holden for the said County, and to abide and perform such Order as shall be then and there made in Pursuance of the Statutes concerning Bastards: These are therefore to require you to receive the said J. L. into your Custody, and him safely keep until discharged by due Course of Law. Given, &c.

The Condition of a Recognizance to appear at the Sessions after Order made.

36. **T**HE Condition, &c. That if the above-bownden A. B. shall personally appear at the next general Quarter Sessions of the Peace, to be holden for the said County, and abide such Order as shall be then made by the Court, concerning a Male Bastard Child, born of the Body of C. D. single Woman whereof he the said A. B. is adjudged the reputed Father; that then, &c.

37. It seems, because the Mother was rarely punished by 18 *El. c. 3.* 'twas enacted by the *Stat. 7 Jac. 1. c. 4.* as follows; because great Charge ariseth upon many Places within this Realm, by Reason of Bastardy, besides the great Dishonour of Almighty G O D, that every lewd Woman, which, after this present Session of Parliament, shall have any Bastard which may become chargeable to the Parish, the Justices of the Peace shall commit such lewd Women to the House of Correction, there to be punished and set on Work during the Term of one whole Year; and if she shall offend again, that then to be committed unto the said House of Correction as aforesaid, and there to remain until she can put in good Sureties for her good Behaviour not to offend so again.

38. I observe that by this Clause, no Woman, whose Child is in no Probability of being chargeable to the Parish, is within this Act. 2. That to commit for Life for the first Offence is void. *Cro. Car. 47. 3.* None can be punished upon this Statute for her second Offence, unless she has been questioned and punished for her first Offence; but she may be punished for her first Fault, either on 18 *El. c. 3.* or by this Act; but she may be punished for her second Offence as if it were her first, in Case she was never punished for her first. 2 *Bulst. 348.* It seems the Child, tho' the Practice is otherwise, ought not to be sent to the House of Correction with the Mother, but left to be provided for by the Parish, or the putative Father. *Dalt. 41.* A Woman is not to receive any Punishment till she is delivered, and in 3 *El.* a Woman who was with Child, being by the Governors of Bridewell ordered to be whipped, and falling in Labour thereon, they were fined in the Star-Chamber, and ordered to pay the Woman Money. *Dalt. 41.*

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2 *Bulst. 248.*

None can be
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A Mittimus of the Mother to the House of Correction.

To the Keeper of the House of Correction for the County of, &c.

39. **W** Hereas E. W. hath lately been delivered of a Bastard Child, likely to become chargeable to the Parish of D. where it was born; These are therefore to require you to receive into your Custody the Body of the said E. W. to be punished and set on Work during the Term of one whole Year, according to the Statute in that Case made and provided; hercof sail not. Given under our Hands and Seals, &c.

40. If she put in Security to discharge the Parish, she cannot be punished by the Stat. 7 Jac. 1. c. 4. but by 18 El. c. 3. *Coke's Magna Charta, f. 733.* the Cause of the Commitment ought to be mentioned in the *Mittimus*, that it may appear if the Prisoner be liable or not. *Dalt. 419.* She cannot be punished if she give Security.

41. Both these Statutes only extending to the Persons of Church-wardens, &c. may draw themselves clandestinely, leaving often Effects behind; therefore by the 13 & 14 Car. c. 12. it is enacted, that it shall and may be lawful for the Church-wardens and Overseers for the Poor of such Parish where any Bastard Child shall be born, to take and seize so much of the Goods and Chattels, and to receive so much of the annual Rents and Profits of the Lands of such putative Father or lewd Mother, as shall be ordered by any two Justices of the Peace as aforesaid, for or towards the Discharge of the Parish, to be confirmed at the Sessions for the bringing up and providing for such Bastard-Child; and thereupon it shall be lawful for the Sessions to make an Order for the Church-wardens or Overseers for the Poor of such Parish, to dispose of the Goods, by Sale or otherwise, or so much of them, for the Purposes aforesaid, as the Court shall think fit, and to receive the Rents and Profits, or so much of them as shall be ordered by the Sessions as aforesaid of his or her Lands. Church-wardens, &c. may seize Effects of putative Father, &c.

An

An Order for the Relief of the Parish in Case of a Bastard, out of the Estate of the reputed Father.

To the Church-wardens and Overseers of the Poor of, &c. and every of them.

42. Berks, ff. **F**Orasmuch as upon your Complaint to us, it appeareth that R. G. the reputed Father or Mother of a Bastard-Child, born in the Parish aforesaid, hath lately run away out of the said Parish, and left the said Bastard-Child upon the Charge of the Parish aforesaid, although the said R. G. hath Estate sufficient to discharge the said Parish: These are therefore in his Majesty's Name to require and authorize you, and every one of you, that you, some or one of you, do seize and take so much of the Goods and Chattels, and receive so much of the annual Rents and Profits of the Lands of the said R. G. as will amount to the Sum of, &c. which we do, according to the Form of the Statute in that Case made, order you to take and receive for or towards the Discharge of the said Parish, for the bringing up and providing for the aforesaid Bastard-Child. Given under our Hands and Seals, the, &c.

43. If a Bastard-Child is found wandering, it ought to be sent to the Place of its Birth.

5thly. Of Proceedings on Appeal to the Sessions, and on Certiorari in the King's Bench.

44. The Justices who made the Order have no Vote at the Sessions, for they cannot be presumed to be indifferent Persons where the Legality of their own Act is questioned. If the Justices proceed on 18 Eliz. cap. 3. the Sessions have no Power to commit, but ought to proceed on the Parties Recognizance, *Regina v. Weston*, 2 Ld. Ra. 1157. but if on 3 Car. 1. cap. 4. the Sessions may commit as the two Justices might have done, that is, unless the Party put in Security to perform the Order, or appear at the next Sessions. *Salk. 122. Regina cont. Weston. Ld. Raym. ubi supra.*

45. After Appeal to the Sessions, if the first Order is discharged, the Matter is *Res integra* before the Sessions, and they may refer the Matter to the two Justices, but the first Order must be first discharged, for till then, no Reference can be made; but as they now have, by 3 Car. 1. cap. 4. an original Jurisdiction of Bastardy at the Sessions, it seems better that the Sessions should make a final Order. *Bulst. 342. Rex cont. Smith.* If at the Sessions the Order of the two Justices

Justices who made the Order have no Vote at Sessions. Where Sessions can commit, and where not.

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stices is discharged, that Party, who by them was adjudged the putative Father, is for ever cleared; nor can any subsequent Sessions, or Justices of the Peace, ever charge him with the Maintenance of the Child, &c. *Wil. Jones* 380. *Pridgeon's Case*, *Cro. Car.* 341, & 350. 1 *Vent.* 159. *Hamond's Case*, *Anonymus*, &c. 2 *Bulstr.* 341. *Mich.* 6 *Car.* 1. *Smith's Case*. An Appeal from an Order of Bastardy ought to be the next Sessions, unless the Party proves that he had not Notice till after the next Sessions; and it were fit it should appear so in the Order of Sessions. *Comber.* 448.

46. It has been doubted on the Words of the Statute, which directs the Appeal to be at the next Quarter-Sessions, whether if the County being large, as *Kent*, and there be two Quarter-Sessions, one for each Division, the Appeal shall be to the next Quarter-Sessions that is held for that Division; and also, if the Party adjudged to be the putative Father beyond Sea at the Time the very next Sessions is held, whether he may not appeal to the next Sessions after his Return; and both these Questions have been adjudged in the Affirmative. 2 *Sid.* 149. *Rex cont. Coyston.* 3 *Keb. Rex cont. Baker.*

47. The Court of Quarter-Sessions cannot commit one refusing to obey their Order, by which that of the two Justices is altered, but ought to proceed against the Party on his Bond. 2 *Bulstr.* 341. *The King cont. Hammond*, and 342. *The King and Smith.* An Order upon a Defendant to keep a Bastard, made by two Justices, is discharged at Sessions; but there they bound him to appear at the following Sessions, as supposed, apprehending that better Evidence might be found against him. After this the same two Justices make a new Order upon him to keep this Bastard; it was quashed in *B. R.* for he having been once legally acquitted, cannot again be drawn in Question for the same Fact. *Rex v. Tenant*, 2 *Ld. Raym.* 1423, 1424.

48. If the Child dies after Order made, pending the Appeal, the Justices at the Sessions may and ought (if they think the Person charged by the Order of the two Justices to be the Father) to order him to reimburse the Expences the Parish have been at in maintaining the Child during it's Life; but Proof must be made of the Service of the Order. Where the Sessions may order the Father to pay the Charges.

49. Though none but the Justices have Power to adjudge who is the putative Father, yet, it seems, if the Justices are unreasonable in appointing Provision for the Child, as if they appoint but 2*d.* per Week, the Court of King's Bench will judge of that. 2 *Sid.* 361. *Rex cont. Parkess.* Though the Determination of the Sessions is final to the Merits, yet, if there be a Defect in Form, or other Fault appears on the Face of the Order, a *Certiorari* may be brought to remove the said Order into the King's Bench, where it will, for such Defects,

Defects, be quash'd, An Error in Part of an Order shall not vitiate the Whole. *Cro. Car. 470. Slater's Case. Keb. 534. Rex cont. Coffin.* When a Motion is to quash an Order for maintaining a Bastard-Child, the Person charged ought to be present in Court, to enter into Recognizance to abide the Order of the Justices if adjudg'd against him. For, if the Order be affirmed, he must be committed until he find good Security to perform it, &c. *Comber. 418.*

50. Whatever was deficient or misconceived upon the Statute of Queen *Elix.* as to the Order to be taken concerning Bastard-Children by Justices of the Peace, &c. we have now a new Statute to assist them in their Duty, *viz.*

51. The Statute 6 *Geo. 2. cap. 31. for the Relief of Parish and other Places, from such Charges as may arise from Bastard-Children born within the same,* enacts, that if any single Woman shall be delivered of a Bastard-Child, which shall be chargeable, or likely to become chargeable to any Parish or extraparochial Place, or shall declare herself to be with Child, and that such Child is likely to be born a Bastard, and to be chargeable, &c. and shall in either of such Cases, in an Examination to be taken in Writing upon Oath before one or more Justice or Justices, &c. charge any Person with having gotten her with Child, it shall be lawful for such Justice, &c. upon Application made by the Overseers of the Poor, or one of them, or by any substantial Householder of such extraparochial Place, to issue out a Warrant or Warrants for apprehending the Person charged, and for bringing him before such Justice, &c. or any other of such County, &c. who are by this Statute authorized and required to commit the Person so charged to the common Gaol or House of Correction, &c. unless he shall give Security to indemnify such Place or Parish, or shall enter into a Recognizance with sufficient Surety, upon Condition to appear at the next General Quarter-Sessions, or General Sessions, &c. and to abide and perform such Order or Orders as shall be made in Pursuance of the Act 18 *Elix.*

52. Provided, that if the Woman so charging any Person shall happen to die, or be marry'd before she shall be deliver'd, or if she shall miscarry of such Child, or shall appear not to have been with Child at the Time of her Examination; in any of these Cases, such Person shall be discharged from his Recognizance at the next General Quarter-Sessions, or General Sessions, &c. or immediately released out of Custody, by Warrant under the Hand and Seal of one or more Justices, &c. residing in or near the Limits where such Parish or Place shall lie.

53. Provided also, that upon Application made by any Person committed by Virtue of this Act, or by any Person on his Behalf, to any Justice or Justices residing in or near the

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Limits, &c. such Justice, &c. is authorized and required to summon the Overseers of the Poor, or such substantial Householder, to appear before him at a Time and Place mentioned in the Summons, to shew Cause why such Person should not be discharged; and if no Order shall appear to have been made pursuant to the Act 18 *Eliz.* within six Weeks after such Woman shall have been delivered, such Justice shall discharge him from his Imprisonment.

54. Provided, that it shall not be lawful for any Justice to send for any Woman before she shall be delivered, and one Month after, in order to be examined concerning her Pregnancy, or to compel her to answer any Questions.

55. I shall add a few Cases relating to Bastardy, and so conclude this Head. The two Justices may inflict a corporal Punishment upon the reputed Father, by Virtute of Stat. 18 *El.* cap. 3. but this is very rarely done, unless he is so very poor as not to be able to indemnify the Parish. It has even been held that he is not punishable by this Statute, unless the Child is chargeable to the Parish. *Comber. 434.* If the Father of a Bastard dies poor, the Mother must provide for the Child, if able; and if an Harlot will take the Child whereof she is delivered, and suffer it to lie abroad, whereby Vermine destroy it, this is Murder. 18 *Eliz.* cap. 3. 2 *Bulst.* 250. 21 *Jac.* 1. cap. 27. *Crompton* 24. 7 *Jac.* 1. cap. 6.

56. A Motion was made at the Quarter-Sessions to quash an Order made, that one should keep his reputed Child, because he had kept him heretofore; but it not appearing by the Order either that he was his Bastard, or his lawfully begotten Child, the Order was quashed. *Style 154.* If by Practice and Design a Child be born in a Parish, the Parish where the Practice was, shall keep the Child. 2 *Bulst.* 341. An Order for keeping a Bastard Child was quashed, because the Order did not direct how long the Party should keep the Child. *Mich. 24. Car. 1. B. R. Style 154.* An Order of Bastardy, not said in the Order, the Defendant was summoned, or had Notice, or was heard. *Curia*: Not requisite, where the Order is made by two Justices; otherwise, had it been originally made at the Sessions. So an Order for paying so much weekly to a Parish towards keeping of a Bastard Child was quashed, because it did not appear by the Order, that the Child was born in that Parish to which the Money was to be paid. *Style 368.*

57. A. was ordered by two Justices to pay 8*l.* towards keeping a Bastard Child, but had no Notice of the Order till the Time given him by the Statute to appeal to the Sessions was past: The Court made a Rule, that the next Sessions in *Middlesex* (where the Matter was) should hear the Matter, and make an Order for the Charge or Discharge of A. and that

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2 *Bulst.* 348,
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Cases of Ba-
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should be final. *Pasch. 19 Car. 2. B. R. 1 Sid. 326. King cont. Hill.* An Order made without Complaint of the Parish Officers is not good. *Blackerby's Cases 44.* But it was otherwise held in *B. R.* by Lord *Hardwicke*, Ch. Just. and the Court. *Hil. 9 G. 2. Rex ver. Jenkins.* Two Justices cannot order the reputed Father to give Security for the Performance of their Order, before he hath made Default of obeying that Order. *Blackerby's Cases 45.*

58. If a Woman conceal the Death of her Bastard, and do not prove by one Witness that it was still-born, it is Murder. *21 Jac. 1. cap. 27.*

59. Order was, *Whereas a certain Woman was brought to Bed of a Female Bastard Child in N. and after dropped in S. Cur.* You must either name her, or say a Person unknown; and it was quashed. In an Order of Bastardy not said, one of the Justices was of the *Quorum*, quash'd. *Queen and Knott, and Queen and Cotton, Pasch. 1712.*

60. If the Officers are carrying a Person by Order of Removal, and she be delivered on the Road *in transitu*, the Bastard shall go with the Mother whither she was going; and if there be an Order made, and before that Order can be served, the Bastard is born, it gains no Settlement, but shall be sent with the Mother. *Pasch. 1711.*

61. The reputed Grandfather of a Bastard-Child is not to be charged, as in Case of a legitimate Child. *Black. 59.* A Bastard was born in one Parish, but taken and kept by the reputed Father in another, and after 20 Years he dies, it is to be kept by the Mother, if able. *2 Bulst. 250, 293. Blac. 52.*

62. The two Justices cannot make an Order upon the Woman's Complaint only. *Blac. 63. Cont. per Hardwicke, C. J. supra §. 57.* Where Quarter-Sessions first make an Order in Bastardy, and afterwards the two Justices make one, it is a Nullity. *Blac. 51, 52.* If the two Justices make not a Provision for the Bastard, the Sessions must settle it as the two Justices ought to have done it. *Jones 330.* An Order to pay such Charge as the Parish had been at, and did not say, that the Child was likely to be chargeable, and yet held good. *1 Vent. 37.* Sessions may order a Payment notwithstanding the Child's Death.

63. A Man being adjudged the putative Father by Justices of Peace at the Sessions, which is by Authority of the Statute Law, it cannot be impeached in the Spiritual Court, or elsewhere. *Cro. Jac. 625. 2 Sid. 29. 1 Vent. 59. Keb. 546.*

64. The two first and next Justices have no Power to commit any one for not performing their Order, but they are to bind him over to appear at the next Quarter-Sessions, and may commit for Want of Sureties. *2 Bulst. 341. Hammond's Case.* The Recognizance taken, ought to be in the Disjunctive.

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tive, viz. to perform the Order by them made, or to appear at the next Quarter Sessions, and to abide the Order there. 2 *Bullst.* 341, 342.

65. The Parish where a Bastard is born, whose Father cannot be found, must maintain it. A poor Infant is to be maintained by the Parish where born, unless they can find that it has another Settlement. *Hamlet of Spittlefields v. Parish of St. Andrew Holbourn*, 1 *Ld. Raym.* 567. The bare Conspiring to charge one with the Keeping of a Bastard Child, though the Woman be not with Child, nor there be no Child really, but only a Contrivance to defame the Person, and cheat him of his Money, is a Crime of a very heinous Nature, and indictable. 1 *Vent.* 304. *Rex v. Armstrong.* 1 *Levinz* 62. *Rex v. Kimberty.*

66. A Bastard Child is generally to be settled where it is born; but if it be born in a Parish to which the Mother is removed by an Order that is illegal, it will gain no Settlement there. *Salk.* 121. *Westbury and Coston Parishes* 532. *Wood's Case*, *Salk.* 532. *Carth.* 349. S. C. On Motion to quash an Order of two Justices to remove a Woman and her Bastard Child from *A.* to *B.* whereas it appeared by the Order that the Child was born at *C.* By *Holt*, Chief Justice, the Bastard must be kept where born. *Trin. con.* 10 *W.* 3. *B. R. Inhab. St. Nicholas and Killington Parish*, 2 *Salk.* 485. A single Woman was removed from *D.* to *S.* by two Justices, thence by two Justices to *B.* she voluntarily returned to *D.* and there bore a Bastard Child. 'Twas said she came to settle contrary to Law. *Per Holt* Chief Justice, they should state the Fact, not the Law; if any Fraud appear in conveying a Woman to bear a Child, it may be sent back with its Mother to her last legal Settlement. *Comb.* 285.

67. An Order of Bastardy under the Hands of more than two Justices is good (if one of them be of the *Quorum*) for the Statute is not restrictive to two, but there must be two at the least. *Hatton's Case*, *Salk.* 477. From an Order of Bastardy the Appeal must be to the next General Sessions. *Rex v. Shaw*, *Salk.* 482. but see §. 46. And Orders relating to Bastard Children cannot be quashed, except the reputed Father be present in Court. *Rex v. Matthews*, 2 *Salk.* 475. see above, §. 49. where there is an Order by two Justices, and the Sessions order a Reference, resolved, the Reference by the Justices at the Sessions, before they had allowed or disallowed the first Order, was illegal. By an Order of two Justices of the Peace, that the Defendant *Barebaker* should pay a certain Sum of Money weekly, till the Bastard Child should attain the Age of 14 Years, it was held by the Court that the Order was naught, because the Justices have no Power but to save and indemnify the Parish, and that is only to oblige the De-

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Cases of Bastardy.

pendant, *Barebaker*, to maintain the Child as long as it is, or may be chargeable to the Parish. *The King cont. Barebaker in B. R. Salk. 121. S. C.*

68. If the Husband be out of the four Seas, during the whole Time of the Wife's going with Child, in that Case the Child is a Bastard; but if the Husband were here at all within that Time, it is legitimate and no Bastard: Besides, it did not appear by the Order that the Husband was absent all the Time; the Order was for these Reasons quashed. *Mich. 3 Ann. Reg. cont. Manly. Vid. 5 Mod. Alinjon v. Spence.*

69. In the Case between *Budworth and Damply, Hil. 5 Ann.* it was held, 1st, That an Order made upon the Overseers of any Parish by two Justices, for raising a Sum towards the Maintenance of a Bastard, or poor Person, does not determine the Settlement of that Person in that Parish, for the Right of Settlement is not contested, but presumed. 2^{dly}, That the Clause in the Stat. 13 & 14 Car. 2. c. 12. which provides, that distinct Townships of large Parishes in the Northern Counties shall provide for their Poor, must be understood with Respect to the Maintenance of poor and impotent Persons, and not with Respect to Bastards; but if a Bastard be grown up, and by Accident grow lame or impotent, he shall be relieved as a poor Person within that Statute. 1 *Salk. 123. S. C.*

70. Upon a Motion to quash an Order, the putative Father must be in Court; the Objection was, That the Order did not set forth that the Child was likely to be chargeable; but adjudged, that it is self-evident that Bastards are likely to be chargeable. 2 *Salk. 475. Rex ver. Matthews, sed vide Rex ver. Nelson, 1 Vent. 37. contra.* If the Child dies after the Order is made by the two Justices, and before the next Sessions, and no Security be given to perform the Order, then, when the Party appears at Sessions, they may order him to pay the Charges upon Proof of serving the Order. But if Security hath been given, then the Sessions have no further Power, but the Bond must be put in Suit if the Condition is not performed. 2 *Bulst. Rex ver. Hammond.* The Bond must be made to the Churchwardens, &c. and their Successors.

71. The Constable willingly or negligently suffering the Father to escape after he is apprehended by a Warrant, one Justice may bind him over to the Sessions, and there he may be indicted. See below, §. 73. So may any Person who shall persuade, procure or convey away the reputed Father, or who suffers the Mother to escape, or conveys her away. But this is not by Virtue of any of the Statutes made against Bastardy; it is only a discretionary Act in the Justices, which the Conservators of the Peace had at Common Law.

72. In the Order not said, the Child was born in the Parish; and by the Statute, the Justices cannot make an Order

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Offender

compel a Man to contribute towards the Maintenance of a Bastard Child, but in Case of that Parish where the Child was born. *Queen and Cash, Mich. 11 Ann. Reg. B. R.* See below, §. 74. The Defendant was compelled by the Justices to give Security by Bond, (*Parker, Ch. Just.*) the Justices have no such Authority; if the Party refuses, upon Request, they may bind him over to the Sessions. *Queen and Ridge, Mich. 11 Ann. Reg. B. R.*

73. A Warrant was given to the Defendant, being Constable, to apprehend one *Jones*, who the Woman swore had got her with Child: The Constable lets him escape: The Justices make an Order for him to pay 3 *l.* towards the Expences the Parish have been at, and 1 *s.* per Week towards his Maintenance, and the Mother to pay 6 *d.* per Week. Now this Order was quashed as to the Constable, for the Justices have no such Authority; good as to the Mother; for they have Power to charge either the Father or the Mother. *Queen and Jefferys, Mich. 11 Ann. Reg. B. R.* See above, §. 71.

74. An Order to keep the Child until he could gain his Livelihood, ill for the Incertainty. 2. It does not appear the Child was born in the Parish, quashed. The Parish of *Cuddington, Pasch. 1711.* See above, §. 72. *Obj. 1.* It does not appear by the Order that the Child was born in the County. 2. Said, the Examination was taken before one or two of us Justices of the Peace, must be before two. 3. To keep the Female Bastard when it shall be born, repugnant: How can it be known whether it is a Male or Female before it is born? But the Court held this last Objection to be but Surplufage, but quashed for the two first Objections. *Queen and Thorn, Pasch. 1714. B. R.* An Order made upon the Defendant to maintain a Bastard Child was quashed, because though in the Complaint it was alledged, the Child was born in the Parish of *H. St.* yet there was no Adjudication by the Justices, nor Words of theirs, from whence it could be collected in what Parish the Child was born. *Pasch. 10 Geo. 1. Rex v. Godfrey, 2 Ld. Raym. 1363;* and in that Case Mr. Lee cited *Regina v. Beddington, Pasch. 10 Ann.* of such an Order quashed for this very Exception.

75. Justices in Corporations, &c. are to put the Acts in Execution relating to Bastards, as Justices in the Counties, &c. A Woman wrongfully charging a Man with getting a Bastard upon her Body, was committed to the House of Correction for Life. *Pasch. 13 Car. 1.* The usual Punishment for these Offenders, is Pillory, publick Whipping, &c. 1 *Vent. 305.*

C. H. A. P. XXXVIII.

Beggars.

Law against
begging in the
Streets, &c.

1. **I**T was remarked in the former Editions of this Book, that though the Statute of 12 Ann. c. 23. which obliged Constables to remove Beggars, and for a second Offence to whip them, was severe enough against Begging and Beggars yet it had little Effect; which proceeded from one grand Mistake that seemed to run through all our Laws on this Subject, viz. the punishing real Objects of Charity as Criminals, instead of providing Hospitals for those who really are not able to work, and Workhouses, or at least Work for all those who are really able; that Act being now repealed, and some Alterations introduced as to the Treatment of Beggars, both in apprehending them, and disposing of them afterwards, 'tis wished the same may be effectual.

2. In the County of Leicester, one Wright, a lusty young Fellow, to make himself impotent, and thereby the better qualified for Begging, caused his Companion to strike off his Left Hand, and both of them were indicted and fined. Co. Litt. 117. *Quere*, Whether since the Coventry Act this had not been a capital Felony in them both.

C. H. A. P. XXXIX.

Certificates.

How Certifi-
cates are to be
granted and
attested.

1. **B**Y Stat. 8 & 9 W. 3. c. 30. a poor Man has Liberty to remove from one Parish to another for Work, and the better Maintenance of his Family by Certificate under the Hands and Seals of the Churchwardens and Overseers of the Poor, or the Overseers where there are no Churchwardens, acknowledging the Person to be an Inhabitant legally settled in their Parish.

2. This Certificate must be attested by two credible Witnesses, and allowed and subscribed by two Justices, and then delivered to the Officers of the Parish to which the poor Man removes, and the poor Man shall remain in this Parish until he wants Relief, when the first Parish is obliged to receive and to relieve him.

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3. But by 9 & 10 W. 3. c. 11. poor Persons coming into any Parish by Certificate shall not gain any legal Settlement, without *bona fide* taking a Lease of a Tenement of 10 l. per Ann. or legally being put in and executing some annual Parish Office.

Where Certificate Persons gain a Settlement.

4. And by Stat. 12 Ann. c. 18. if any Person residing in a Parish by Certificate shall take an Apprentice, or hire a Servant, such Apprentice, or such Servant, shall not be adjudged to gain any Settlement in such Parish, unless the Master hath gained a Settlement there.

But not their Apprentices, or Servants.

A Certificate of a Man's being a Parishioner in a Parish.

To the Churchwardens and Overseers of the Poor, &c.

5. **W**E the Churchwardens and Overseers of the Poor of the Parish of, &c. in the County of, &c. hereby certify, that we own and acknowledge A. B. Labourer, and E. his Wife, to be both Inhabitants legally settled in our said Parish of, &c. And we do hereby promise for ourselves and Successors to receive them in our said Parish, whenever they shall become chargeable. In Witness whereof, we the said Churchwardens, &c. have hereunto respectively set our Hands and Seals, &c.

Witness,
J. M. Rector,
S. L. &c.

L. P. }
C. D. } Churchwardens.
N. O. }
T. W. } Overseers.

We whose Names are hereunto subscribed, two of his Majesty's Justices of the Peace of and for the County of, &c. do allow of the above Certificate.

J. S.
J. F.

6. By a Stat. 3 Geo. 1. c. 29. it is enacted, that the Witnesses who attest the Execution of Certificates of Settlements by the Churchwardens and Overseers, or one of them, shall make Oath before the Justices, who by the Act 8 & 9 W. 3. c. 30. are directed to allow the same, that such Witnesses did see the Churchwardens and Overseers severally sign and seal the said Certificates, and that the Names of such Witnesses are of their own Hand-writing; and the Justices shall also certify, that such Oath was made before them; and every such Certificate shall be allowed in all Courts as duly and fully proved, and be taken as Evidence without other Proof.

Witnesses who attest Certificates must make Oath, &c.

On Removal,
Parish to be
re-imbursed
their Charges.

7. When any Overseers of the Poor of any Parish shall move back any Persons and their Families sent thither by Certificate, and becoming chargeable, the Overseers shall be re-imbursed such reasonable Charges as they have been put to in maintaining and removing such Persons, by the Churchwardens or Overseers of the Parish to which such Persons are removed, the Charges being first ascertained by one or more Justices of the County to which such Removal shall be made, which Charges so ascertained shall, in Case of Refusal, be levied by Distress and Sale of the Churchwardens and Overseers Goods, returning the Overplus; which Warrant the Justices are required to grant.

Travelling
Poor are to
have Certifi-
cates.

8. By 13 & 14 Car. 2. c. 2. Persons in Time of Harvest, or any Time to get Work, may go into any County, Parish or Place, so as they carry with them a Certificate from the Minister of the Parish, and one of the Churchwardens and Overseers of the Poor, that they have a Dwelling in their Parish, and are Inhabitants there; and such Persons are to return to their own Parishes when their Work is finished, or a Justice of Peace may send them to the House of Correction, to be punished as Vagrants; and if such Persons fall sick, &c. two Justices of the Peace may order them to be conveyed back to the Place of their Habitations.

9. Churchwardens or Overseers refusing to receive such Persons, &c. are to be bound over to the Assizes or Sessions, and there be indicted and punished.

In what Case
a Certificate-
Man can't be
removed.

10. Where a poor Man comes into a Parish with a Certificate, he cannot be removed, unless he is actually chargeable to that Parish; for it is not enough to say, that he is likely to be chargeable. *Par. Little Kire and Woolfall, 1 Salk. 530. Cases of Queen Anne 64, 65. The Queen ver. Whiten.*

Certificate
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all the World.

11. It is now held, that where a Parish gives a Certificate duly attested to a poor Man, owning him to be a Parishioner, though he be not really so, yet are they concluded and estopped, not only against the Parish to which the Certificate is given, but also against all other Parishes whatsoever; for Certificates are solemn Acknowledgments that the Person is legally settled with them; and as all other Parishes are bound to receive him, so that Parish which certified is concluded as to all other Parishes whatsoever; for it is in Nature of an Adjudication; it is signed by the proper Officers, and allowed by two Justices who are proper Judges, and who, upon less Evidence, could have adjudged it a Settlement. *3 Salk. 535. But see Par. All-Saints and St. Giles, 2 Salk. 530, 531, Inhab. Honiton and St. Mary-Axe, 535. where it is said the Reason of the Act of Parliament about Certificates, was only to encourage Parishes to receive poor Persons who were minded to remove; therefore it enacts, That when the poor*

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poor Person shall be chargeable, the Parish which gave the Certificate *shall provide for him, &c.* These Words oblige that Parish against the Parish to which they gave the Certificate; but as to all other Parishes, they are as they were before.

12. Adjudged, that where a poor Man, who hath a lawful Settlement in one Parish, comes into another by Certificate, and gains a Settlement there, he shall not afterwards be sent back to the Parish certifying. 3 *Salk.* 253.

Certificate-
Man gaining
Settlement
can't be re-
moved.

C H A P. XL.

Cottages for Poor.

1. **B**Y 43 *Eliz. cap. 25.* Cottages may be erected on the Waste, at the Charge of the Parish, for poor impotent Persons, by the Churchwardens and Overseers of the Poor, or the greater Part of them, having obtained Leave of the Lord of the Manor in Writing under Hand and Seal, and procured an Order of Sessions for confirming the same; and if the Lord of the Manor will not give Consent, the Sessions alone may tolerate a Cottage for a particular Time. Inmates and more Families than one may be placed in these Cottages.

Method of
erecting Cot-
tages for Poor.

2. The Power given to the Justices by this Statute extends only to Habitations for such Poor as are impotent; and if it does not appear on the Face of the Order, that the Person was impotent as well as poor, the Order is ill. 2 *Keb.* 744. *Rex* cont. *May*, 53. *Rex* cont. *Grat*, 2 *Keb.* 643. *Rex* cont. *Payne*, 5 *Mod.* 397.

A Petition to Justices in their Sessions, for an Order of Sessions to erect a Cottage.

To the Worshipful the Justices of the Peace, at the General Quarter-Sessions of the Peace, holden at, &c. on, &c.

The humble Petition of A. B. of, &c.

Sheweth,

3. **T**HAT whereas your Petitioner being very poor and impotent, and with his Wife and Children settled as an Inhabitant of and in the Parish of, &c. and at present destitute of an Habitation, hath by Address made to T. W. Esq; Lord of the Manor of, &c. obtained his Consent under his Hand and Seal, for your Petitioner to erect and set up a Cottage on the Waste within the Parish of, &c. aforesaid, for an Habitation for himself and his Family, if an Order of Sessions can be obtained for Confirmation thereof, as by the Paper hereunto annex'd doth appear.

May you therefore be pleased to grant unto your Petitioner the Order of this Court, whereby your said Petitioner may be enabled to set up a Cottage for an Habitation for himself and poor Family, on some convenient Place, on the Waste within the Manor of, &c. aforesaid.

And your Petitioner shall ever pray, &c.

The Lord's Consent to the Erecting a Cottage.

4. **U**PON the Petition of A. B. and the Certificate of the Inhabitants of the Parish of, &c. for erecting a Cottage in the Parish of, &c. I do hereby give my Consent, being Lord of the Manor of, &c. aforesaid, that the said A. B. shall and may erect and set up a Cottage for the Habitation of himself and Family in some convenient Place, on the Waste within the Parish aforesaid, to be assigned by my Steward; provided an Order of Sessions may be procured according to Law for Confirmation thereof. Witness my Hand, &c.

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An Order of Sessions for erecting a Cottage.

At the General Quarter-Sessions of the Peace, &c. holden at, &c.

3. Berks, ff. **W** Hereas A. B. of, &c. Labourer, is poor and impotent, and hath obtained Consent of C. D. Esq; Lord of the Manor, &c. in the County aforesaid, to erect and set up a Cottage for an Habitation for himself and Family in some convenient Place, on the Waste in the Parish of, &c. aforesaid; provided an Order of Sessions be procured for the Confirmation thereof: And the said A. B. having humbly petitioned, and besought us to grant such an Order; we do therefore hereby order and give our Consent, that the said A. B. shall and may erect and set up a Cottage for the Habitation of himself and Family, on some Place in the Waste in the Parish of, &c. aforesaid, according to his Petition, and the Consent of the said C. D. By Order of Court, &c.

The Money for building these Cottages at the publick Charge of the Parish, may be raised by a Tax, as before directed, &c.

C H A P. XLI.

Families left on Parishes.

1. **B**Y Stat. 43 *El. c. 2.* where any Person able to labour shall run away from the Parish, and leave his Family behind him, on Information thereof given upon Oath, two Justices of Peace may commit him to Gaol, there to remain and be punished as an incorrigible Rogue. And if any Man or Woman able to work shall threaten to run away and leave their Families upon the Parish, the same being proved by two Witnesses before two Justices, the Person so threatening shall be sent to the House of Correction, &c. unless sufficient Security be given for the Discharge of the Parish. Justices may commit a Man running away and leaving his Family to the Parish, &c.

2. By Stat. 13 *G. 2. c. 2.* All Persons able in Body, who run away and leave their Families to the Parish, are declared Vagrants, and punishable as such.

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In what Cases
Parish Officers
may seize Ef-
fects, &c.

3. By Stat. 5 G. 1. c. 8. where any Wife, Child or Children shall be left upon a Parish, the Churchwardens or Overseers of the Poor, upon Application to, and by Warrant from two Justices of the Peace, may seize so much of the Goods and Chattels, and receive so much of the Rents and Profits of the Lands and Tenements of the Husband, Father or Mother of such Wife or Children, as the Justices shall direct for the Discharge of the Parish, in providing for such Wife or Children; which Warrant being confirmed at the next Quarter-Sessions, the Justices at the Quarter-Sessions may make an Order for the Churchwardens or Overseers to dispose of the Goods or Chattels by Sale, and to receive the said Rents and Profits of the Lands and Tenements, or so much of them as they think fit, for the Purposes aforesaid, and the Churchwardens, &c. are to be accountable to the Justices in Sessions, for all such Money as they receive.

4. But then it seems but reasonable, that the Party in whose Hands the Money is, should not be bound by this Statute, until he has Notice of this Warrant; and such Notice should be given before the Warrant is confirmed by the Sessions, that the Party may there appear, and if he can, shew Cause against it.

A Commitment of a Person for running away and leaving his Family on the Parish.

To the Keeper of the Gaol of, &c.

5. Berks, ff. **W** Hereas A. B. and C. D. Overseers of the Poor of the Parish of, &c. have made Information upon Oath before us, two of his Majesty's Justices, &c. that J. K. of, &c. a Person able to work and maintain himself and his Family, did on, &c. last past run away from their Parish aforesaid, and leave his Family upon the said Parish, contrary to the Acts of Parliament in that Case made: These are therefore in his Majesty's Name to command you to receive the said J. K. into your Custody, and him safely to keep, until he shall be delivered by due Course of Law. Given, &c.

6. If Justices of Peace in Sessions make Orders for Parishes to provide Houses, or to give any Persons Maintenance who are not impotent, but able to work, or having any Thing to live upon, these Orders are against Law.

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An Order of Sessions to receive Rent of Lands to discharge a Parish where a Child is left.

7. **W** Hereas A. B. and C. D. Esqrs. two of his Majesty's Justices of the Peace for the County of, &c. upon Complaint to them made by E. F. and G. H. Overseers of the Poor of the Parish of, &c. in the said County, that L. M. a Child of the Age of about seven Years, was last legally settled in the said Parish of, &c. and had been left there by her Mother E. M. who is gone away, and that the Father of the said Child being dead, the said Child had been, and was likely to continue chargeable to the said Parish, which the said Justices upon Examination adjudged to be true: And it appearing to them that the said E. M. was intitled to, in her own Right, and possessed of, one Annuity of 10l. per Annum, given her for Life, by, &c. which is, and has been, paid to her quarterly, by, &c. the said Justices of the Peace, upon Application to them made by the said Overseers of the Poor, did by Order under their Hands and Seals, bearing Date, &c. order and direct that the said, &c. or any other Person that shall be intrusted or appointed to pay the said Annuity at any Time or Times hereafter, should pay, or cause to be paid, into the Hands of the said Overseers of the Poor of the said Parish of, &c. for the Time being, or one of them, so long as the said Child shall continue chargeable to the said Parish, the Sum of 5l. per Annum, Part of the said Annuity of 10l. per Annum, for and towards the Discharge of the said Parish, for the bringing up and providing for the said L. M. and further ordered, the said Overseers of the Poor to take and receive the same accordingly, (pursuant to an Act of Parliament made in the fifth Year of the Reign of his Majesty King George the First, intituled, An Act for the more effectual Relief of such Wives and Children as are left by their Husbands and Parents upon the Charge of the Parish) this Court, upon reading the said Order, produced by the said, &c. Overseers of the Poor of the said Parish, doth confirm the same: And pursuant to the Direction of the said Act, doth also order, that the said Overseers of the Poor of the said Parish, and their Successors, for the Time being, do take and receive the said 5l. per Annum, Part of the said Annuity of 10l. per Annum, out of the Rents and Profits of the Lands and Tenements charged with the Payment of the said Annuity, for and towards the Discharge of the said Parish, for the bringing up and providing for the said L. M. as aforesaid, and that the said Overseers and their Successors be accountable to his Majesty's Justices of the Peace for the said County, at their Quarter-Sessions,

Sessions, for all such Money as they, or any of them, shall receive by Virtue of the Act aforesaid.

C H A P. XLII.

Houses of Correction.

Statutes about
Houses of Cor-
rection.

THE Statutes concerning Houses of Correction are 39 *Eliz. c. 4.* 7 *Jac. 1. c. 4.* and 17 *Geo. 2. c. 5.* The first of these Laws gives Power to the Justices in Sessions, for the erecting one or more House or Houses of Correction in every County, at the Charge of the County; and for the Maintenance and Government of the same, and for the Punishment of Offenders committed thither. 39 *Eliz. c. 4.* This Statute at first was temporary, but was continued by 3 *Car. 1.* By 7 *Jac. 1. c. 4.* 'tis enacted, that in every County there shall be a House of Correction, built with all Conveniences for the setting of Rogues and idle People to work, or every Justice shall forfeit 5 *l.* one Moiety to the Prosecutor, and the other towards building the House; and these Houses, when built or purchased, shall be conveyed to Persons appointed by Justices in Sessions, in Trust to be employed for the keeping, employing and correcting Persons sent thither, and Justices in Sessions are to appoint Governors or Masters of such Houses of Correction, and their Salaries, which are to be paid quarterly by the Treasurer out of the County-Stock. *Ibidem.*

2. Those Governors are to set the Persons sent on Work, and moderately to correct them by whipping or fettering them if unruly, and are to yield a true Account every Quarter-Sessions of Persons committed to their Custody; and if they suffer any to escape, the Justices may fine them at Discretion, which Fine is to be paid to the Treasurer of the County-Stock.

3. The House of Correction is for the Punishing of the Poor who refuse to work, who are to be there whipped and set to work. 2 *Bulst. 358.* And any Person who lives extravagantly, having no visible Estate to support himself, may be sent to the House of Correction, and set at work there, but not whipped, and may be continued there until he give the Justices Satisfaction in Respect to his Living. *Sid. 281.*

4. The Money to erect Workhouses, &c. is to be rais'd by a Tax on the Inhabitants, and on all Lands, &c. and so likewise is the Money needful for the maintaining of the Poor
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in the said Work-houses, so as the same exceed not what hath been usually paid for Maintenance of the Poor.

5. Rogues, Vagabonds, &c. may be sent by one Justice to Who may be the House of Correction, there to be kept to hard Labour sent thither. with moderate whipping, but shall not be chargeable to the County for any Allowance, either at their bringing in, or going out, or during their abode there, but shall have so much Allowance, as they shall deserve by their own Labour.

6. Upon Presentment of the Grand Jury at Assizes, Great Houses of Cor- Session, or General Gaol-Delivery, and at General or Quar- rection, how- ter-Sessions where there is no Assizes, for any County or Li- to be built, &c. berty, that there is no House of Correction, and that it will be necessary to provide one or more, &c. or that the House, &c. already provided is not sufficient, and that it will be necessary to provide, &c. the Justices at General or Quarter-Sessions, may build, or enlarge, or purchase a House, &c. with convenient Backside, &c. or Land, and erect such House, &c. upon Part, and lay out the rest for Back-side; and may raise such Money, as, upon Examination of able and sufficient Workmen, or other Persons, appears to be necessary for these Purposes, and may buy Houses or Land for such Purposes, to be conveyed to such Persons as Sessions think fit, in Trust, &c. And they are to take Care that Houses of Correction be duly fitted up, furnished, and supplied with Furnished. sufficient Implements, Materials, and Furniture, for keeping, relieving, setting to work, employing, and correcting all idle, &c. sent, confined, or continued there: And two Justices in Inspected by the Hundred, or appointed by the Sessions, are to visit twice Justices. or oftner in a Year, inquire, and report at Sessions, in order to Amendment, &c. Justices in Sessions are to have the like Power over future Houses of Correction as over the present; and may fine the Governors as by Stat. 7 Jac. 1. to be paid to the Treasurer, and be Part of the County-Stock; and may appoint and remove Governors or other Officers; and may make Orders and Regulations for the better governing and regulating the said Houses, and for employing, relieving, and punishing the Persons there, or sending them thence; which Orders shall be final to all Intents and Purposes, and no *Certiorari* shall be granted for the Removal of the same. If any Person removed, refuses or neglects to quit Possession for ten Days after Notice given in Writing by Clerk of Peace, two Justices (upon producing to them such Order of Sessions, or an attested Copy, and upon Oath by one credible Witness of Notice given, and of Refusal, or Neglect to quit Possession, by Warrant under Hands and Seals may direct the Sheriff to remove, &c. as upon a Writ of *Habere facias Possessionem*. Stat. 17 Geo. 2. c. 5.

7. The

Justices to order the Treasurer to pay.

7. The Justices at General or Quarter-Sessions, or major Part of them, are to cause such Sums of Money as are necessary, to be paid by the Treasurer out of the Money raised by Virtue of an Act of 12 Geo. 2. *for the more easy assessing, collecting, and levying of County-Rates*; to defray the Expences of apprehending, passing, conveying, and maintaining Rogues, &c. and of erecting, purchasing, enlarging, altering, and repairing Houses of Correction, and of purchasing Land to erect them upon, and for Back-sides and Out-lets; and of sitting up and furnishing them; and of sending Persons to and from the same, and employing them there; and for all other Expences necessary for the Execution of this Act, not before provided for. The rest of this Act is abstracted in Chap. 33. of *Vagabonds*, Stat. 17 Geo. 2. c. 5. Where Authority is given to commit Offenders to House of Correction out of Sessions, and the Time and Manner of their Punishment has not been appointed, the Commitment shall be to the House of Correction, there to be kept to hard Labour until the next General or Quarter-Sessions, or until discharged by due course of Law; and two Justices (of which he who committed the Offender to be one) may discharge Offender before Sessions, if they see Cause, and if not so discharg'd, the Sessions may discharge, or continue him not exceeding three Months. 17 Geo. 2. c. 5.

A Commitment of a Person to the House of Correction.

To the Keeper of the House of Correction, &c.

29 El. c. 4.
7 Jac. 1. c. 4.
Two Justices.
Co. 2 Inst. 7, 8.

8. **R** Eceive into your Custody the Body of A. B. an idle and disorderly Person, as appears upon Oath (or, as appears by his own Confession, as the Case is) and keep him to hard Labour for the Space of ten Days from the Date hereof. Given, &c.

9. By Stat. 14 Geo. 2. c. 33. reciting Part of Vagabond Act 13 Geo. 2. for building Houses of Correction: It is enacted, That Majority of Justices in General or Quarter-Sessions, (where no Assizes, great Session, or general Gaol-Delivery are held) may, upon Presentment of Grand Jury, repair or enlarge House of Correction, or build, or purchase Land to build, &c. and for Backside or Outlet, as might be at Assizes, by 13 Geo. 2.

CHAP.

C H A P. XLIII.**Licences.**

1. **T**WO Justices of Peace may license poor diseased Persons to travel to the *Bath* for Remedies, so as they are provided of Relief in their Travel, and do not beg, 39 *El. c. 4. Dalt.* 209. 1 *Jac. i. c. 25.* for I do not find that any one or more Justices of the Peace may or can license a Man to beg, or ask Relief, except only that they may make a Testimonial, or Licence in the two following Cases, viz.
1. To such as suffer Shipwreck; and,
 2. To Soldiers or Mariners coming from the Seas to pass from Place to Place, and in these two Cases the Law tolerateth them to ask, and receive necessary Relief, as aforesaid.
2. Likewise poor Prisoners delivered out of Gaol may in no ways beg, by 39 *El. c. 4. Dalt.* 209.
3. Though I have been informed, that some Justices of Peace in the County do frequently grant Licences under their Hands to Persons whom they think Objects of Charity to go about and beg, and ask Relief; but this is a Practice directly contrary to Law.

Whether Justices can license People to beg, &c.

C H A P. XLIV.**Maintenance of the Poor.**

1. **B**Y Stat. 43 *Eliz. c. 2.* every Parish shall keep their Cases of main-
 Poor, and on this Statute Removals of Poor are made; raining poor
 for unless the Poor are removed to their own Parishes, every Persons.
 Parish cannot maintain its own Poor.
2. If a travelling Woman, having a small sucking Child, shall be apprehended for Felony, and sent to the Gaol, and be afterwards arraigned and hanged, this Child is to be sent to the Place of its Birth, there to be maintained, if the same can be known; otherwise it must be sent to the Town where the Mother was apprehended. If a Man and his Family be illegally thrust out of a Parish, and during that Time he shall have a Child born, he must be returned to the Place where he was last legally settled, and the Child with him, to be maintained there. *Dalt.* 165. 1 *Salk. Wood's Case, Inhab. Westbury and Cusburn,* 121, 122.

3. If Justices of Peace in Sessions make Order for Parishes to provide Houses, or to give any Persons Maintenance, who are not impotent, but able to work, or having any Thing to live upon, those Orders are against Law.

4. A Father, Grandfather, Mother, or Grandmother, and Husband of the Grandmother, (being of sufficient Ability, are to maintain and relieve their Children, which are accounted impotent Poor, as the Sessions shall order, under the Penalty of 20 s. per Month. 43 *El. c. 2.* By the Common Law, as well as by the Law of Nature, the Father is obliged to provide for his Wife and Children. *Walbam v Sparkes*, 1 *Ld. Raym.* 41. But if the Husband of the Grandmother have no Means or Advancement in Marriage with her, he shall not be obliged to keep the Child. 2 *Bull.* 345, 347. The Husband of the Grandmother having Means, or his being of Ability after Marriage, will not make him liable to Maintenance of the Child, unless the Grandmother had Means sufficient; but if after Marriage Lands descend to such Grandmother, and the Husband enjoys them in her Right, he shall be bound to keep the Child. *Comb.* 321, 405. A Bastard Child is out of the Statute, and to be provided for otherwise. A Father has been ordered to allow Maintenance to the Son's Wife, he being beyond Seas, and a Father-in-law been adjudged within the Meaning of the Act 43 *El. c. 2.* *Style* 183. Children of poor, old, impotent Persons, or others not able to work, are at their own Charges to relieve and maintain them, (in like Manner as Parents are to relieve their Children) if such Children are of Ability, under the Penalty of 20 s. per Month, to be levied by Distress and Sale, &c. *per Stat.* 43 *El. c. 2.* A Father-in-Law does not seem obliged by Law to maintain his Daughter-in-Law, *Rex v. Benoit*, 2 *Ld. Raym.* 1454. but in this Case it is not said what Father-in-Law; nor if he was the Husband of the Mother, whether he had a sufficient Estate by her? Neither did any Counsel appear in Defence of the Order.

5. For the better Relief of poor impotent Persons, and to prevent the Imposition of Churchwardens and Overseers of the Poor, the Parishioners of every Parish are yearly in *Easter* Week, or as often as it shall be thought convenient, to meet and examine the Register-Book of the Poor, and the Reasons of their taking Relief, &c. and to alter the List as they shall see Occasion. *Stat. 4 W. & M. c. 11.*

6. Though the Wife had a legal Settlement before her Marriage, yet it is lost by the Marriage, and she thereby acquires a Settlement with her Husband, and his Death will not alter it. And the Birth of legitimate Children does not gain them a Settlement, except where the Settlement of their Father and Mother is not known, and then only till it is known, and

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and no longer. *Mod. Cases in Law and Equity* 169, 170. between Parishes of *St. Giles in Reading* and *Eversly* and *Blackwater*. A Journeyman Tradesman lodges in *A.* and works in *B.* the working does not gain a Settlement in *B.* *The King v. Hamlet of Spittlefields*, *Mod. Cases in Law and Equity* 308, 309. But it has been held, that where he works and has Board-wages, he will gain a Settlement by his Service, though he lies in another Parish. *Ibid.* 369, 370. *Whitechapel Parish's Case*. See more in *Cb. Settlements*.

7. An Order of Removal was quashed, because it did not aver the Place of the last legal Settlement; but recited, that they were credibly informed, &c. Note; *legal Settlement* and *last legal Settlement* are the same Thing. *Trowbridge v. Weston*, 2 *Salk.* 473.

8. *John Buncher* rented about 30 *l.* a Year at *Woodend*, and dwelt there several Years and died insolvent, leaving a Widow and one Daughter; the Widow removed to *Paulspury* into a Tenement of 40 *s.* a Year, and Land of about 10 *l.* a Year, being Copyhold, and her own Estate for Life, and took her Daughter with her, then about the Age of fourteen; the Daughter lived with the Mother about two Years at *Paulspury* in the Tenement, but the Mother lett the Land to a Tenant. Two Justices held the Daughter's Settlement to be at *Woodend*, and upon an Appeal their Order was confirmed at Sessions. But both Orders were quashed in *B. R.* *Hil.* 13 *Geo.* 1. *Inhab. Woodend in Par. Blakesley in Com. North'ton v. Inhab. Paulspury in eod. Com.* 2 *Ld. Raym.* 1473, &c. Note; That Case was so determined in *B. R.* upon the Authority of the following Case: *John Lloyd* was last legally settled at *St. Catherine's* near the Tower, and there died, leaving *Lydia* his Widow, and six Children between the Ages of three and sixteen Years; after his Death the Widow and six Children went to live in the Parish of *St. George, Southwark*, where she took a House of 12 *l.* a Year, lived there four Months, paid the Queen's Tax, but no other Rent to her Landlord. None of the Children had of themselves gained any Settlement. Two Justices of *Surrey* had by an Order sent them to *St. Catherine's*, and the Sessions of *Surry* confirmed this Order upon an Appeal; but both Orders were quashed in *B. R.* *Mich.* 1 *Geo.* 1. cited at large 2 *Ld. Raym. ubi supra*.

C H A P. XLV.

Orders of Justices about Poor.

Rules for
drawing Or-
ders about
Poor.

1. I Shall here present the Reader with such Rules as I meet with in our Books concerning the Drawing of Orders. The Order must say, last legally settled; for by Law the Place which the Poor were last legally settled at, is the Place which is to provide for them. *Trin. 5 Ann. B. R.* It is not sufficient to say, the Order was made on due Notice, without adding, (on Complaint of the Churchwardens and Overseers of the Poor of the Parish) and though on a *Certiorari* it was returned to be so, yet the Order is the Record, and the Return cannot make a void Order good. *Mich. 9 Ann. inter Paroch. de Northbury and Shugford*, and *Pasch. 6 Ann. Regina cont. Parochias de Langley and Goreing*, 5 *Mod.* 149. *Rex cont. Inhabitants of Wooten Rivers*. If by the Order it doth not appear that one of the Justices is of the *Quorum*, the Order is naught; for two Justices, unless one is of the *Quorum*, have no Authority to remove a poor Man. 5 *Mod.* 321. *The Inhabitants of Childingfeld or Chittingston cont. The Inhabitants of Pentburst*, 2 *Salk.* 473, 474. *Comb.* 200, 400. Where two Justices ought to make and sign an Order, it will be naught if they sign it not being present together. *Walter v. Rumbal*, 1 *Ld. Raym.* 55.

2. The Order must contain an Adjudication of the last legal Settlement of the Party. *Pasch. 6 Ann. Regina cont. Paroch. de Langley & Goreing*. An Order for keeping a poor Woman, though it was alledged that it was uncertain in what Parish she lived, nor said, that she was impotent, yet refused to be quashed. 2 *Keb.* 37. *Kilbeck's Case*. An Order for the removing one because he might become chargeable to the Parish is ill, because it denotes a bare Possibility, and no Probability; it ought to be, because the Party is likely to become chargeable to the Parish. *Faresly*, 54. *Mod. Cases* 163. *Regina cont. Inhabitants of Newnham*. An Order only said that the Justices were informed by the Overseers, that *A. was likely*, &c. but there was no Adjudication that *A. was likely to become chargeable*, &c. *Per Cur.* it is not necessary. *Inhab. Par. Kingston Bowsey v. Inhab. Beddingham in Suffex*, 1 *Ld. Raym.* 513. If the Order do not set forth the Makers to be Justices at the Time of their making, though the Order be confirmed on Appeal, yet it is nought, because though they might be Justices at the Time mentioned in the Order of Confirmation, they might not be so at the Time when the first Order was made.

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made. 5 Mod. 322. *Parish of Walton cont. Parish of Chesterfield.*

3. An Order for the removing of a poor Person to a Place, which the Order rehearſes to be, as the Juſtices are informed, the Place of his laſt Settlement, is not good, unleſs it ſays, the Information is on Oath; but if on Appeal, the Order is confirmed, it is good. 5 Mod. 525. *Parish of Trowbridge cont. Parish of Weſton.*

4. An Exception was taken to an Order for ſettling a poor Man, that he did not rent an Houſe of 10 l. per Annum. *Ch. Juſtice*: That moſt of the Orders ſince 13 Car. 2. have been ſo; and though it might have been better, if it had been added, that he was likely to become chargeable to the Pariſh, yet ſince the Precedents have been ſo, we will not alter it. But then another Exception was, that it is not ſaid in the Order, there was a Complaint made by the Churchwardens, and that was fatal, for the Juſtices of Peace cannot remove a Man without it; and though it is ſaid in this Order, that Complaint was made, yet ſince it is not ſaid by the Inhabitants or Churchwardens of the Pariſh, it is ill. Let the Order be quaſhed. *Mich. 7. W. 3. in B. R. Rex cont. Inhab. de Marlborough, Salk. 492.*

Exceptions to Orders, &c.

5. Where an Order is made for the Settlement of a poor Perſon, and an Appeal thereupon to the Sessions, the Sessions may affirm or quaſh that Order; but they cannot ſend ſuch Perſon to a third Pariſh, who are no Parties to the Appeal. *Inter Inhabitants of Oſwal and Woking, Paſch. 8 W. 3. B. R. Salk. 472, 474. Comb. 396, 401.* A Settlement, by Order of Sessions upon an Appeal, binds all Parties; and if a poor Family, after ſuch Order, return to the Pariſh from whence removed, the Sessions muſt ſee their Order obeyed; but if ſuch poor Family go into another Pariſh not concerned in the Appeal, then two Juſtices of Peace ought, by an original Order, to remove them to the Pariſh where they were ſettled by the Sessions Order. *Inter Inhab. Downhead and Broadchalk, Hil. 9 W. 3. Salk. 481, 489.*

Sessions have no Jurisdiction, but by Way of Appeal.

6. Where two Juſtices of one County ſend a poor Perſon to a Pariſh in another County, two Juſtices of the County whether ſuch Perſon is ſent, cannot make an Order to remove him back again, or to ſend him to any other Place; and the Town, to which ſuch Perſon was ſent, has no other Remedy than by Appeal to the Sessions of that County from whence the Party was ſent. *Inter Inhab. King's Norton and Sawolnihil, Hil. 9 W. 3. Salk. 481, 488.* A general Order to remove a Man and his Family is not good. *Salk. 482, Johnson's Cafe, 485. Vide Chap. LIII. §. 49.*

A general Order to remove a Man and his Family not good.

7. Where the firſt Order is naught, no ſubſequent Order on an Appeal can make it good. *Mich. 10 W. 3. B. R. Anonymus.*

The Examination ought to be by both Justices, or the Adjudication not good.

Order confirmed, or not appealed from, is conclusive to all the World.

Sessions is deemed to be but one Day.

Positive Adjudication of Settlement.

Justices must make distinct Orders on different Statutes.

The same Resolution, *Trin. 2 Ann. inter Selen and Ripley, Salk. 482.* An Order drawn up to have the Opinion of the Court, concluding, and if the Court should be of Opinion, &c. was held to be right. *Ibidem.* The Examination of the Person must be recited in the Order to be by both Justices, (because the Adjudication ought to be by both) or the Order is naught. *Inter Ware and Hamstead, 12 W. 3. B. R. Salk. 488.* It ought to appear in the Order, that the Person removed is a Person removeable. If it be recited, that *whereas Complaint hath been made to us, that A. is likely to become chargeable*, it is naught; but if it be said, *whereas it appears to us upon Complaint, &c. that A. is likely to become chargeable*, it is well enough. *Saddlecomb and Burwash Ont, Salk. 491.*

8. Where an Order is confirmed, or not appealed from, it is conclusive to all the World; but where an Order is reversed by the Sessions, such Reversal only determines that the Place the Party was sent to was not the Place of his last legal Settlement. *Inter Swanscomb and Shenfield, Pasch. 1 Ann. B. R. Salk. 492.* Where the Sessions made an Order, and in the same Sessions vacate it by a subsequent Order, it is held to be well enough; for the Sessions is all deemed but one Day, and the Justices may alter their Judgments at any Time while it continues. *Inter St. Andrew's Holbourn and St. Clement's Danes, Mich. 3 Ann. B. R. Salk. 494, 606.* The Sessions need not set forth the Reason of their Judgment. *Inhab. South Cadbury and Bradon, Salk. 607.*

9. An Order reciting a Complaint, that a Certificate-Man is become chargeable, is not good, unless he is adjudged by the Justices (in the Order) to be actually chargeable. *Inhab. Malden and Fleetwick, Salk. 530.*

10. Justices who make Orders must be said in such Orders, to be Justices of the County, and to say, residing in the County, it is not sufficient, but they need not be of the Division. It must also appear that one of the Justices was of the *Quorum*. *Salk. 474. Rex v. Dobbyn, 480. Eliz. Aspley's Case.* Where Authority is given to two Justices to do any Act, the Sessions may do it in all Cases, except where an Appeal is directed to the Sessions. *Rex v. Inhab. Boughton, 1 Ld. Raym. 426.*

11. An Order was made at the Sessions, that a Man should maintain his Daughter, and allow her *1 s. 8 d.* a Week for her Subsistence: The Order was quashed, because it did not appear by the same that she was unable to work, or that she was sick, aged or impotent, which the Statute requires. *13 W. 3. B. R. Mendoza's Case. Vide Cb. 50, §. 8.*

12. At the Quarter-Sessions an Order was made for the Relief of poor Prisoners in Gaol, and providing Materials to set them at Work, upon the *Stat. 14 El. c. 5. and 19 Car. 2. c. 4.* whereby

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whereby a Sum was assessed on the several Parishes, not exceeding what is allowed by both Acts; but the Order was quashed, because the Justices ought to have made distinct Orders upon the different Statutes. *Inhab. Eatonbridge and Wistram, Salk. 487.*

13. An Indictment for not obeying an Order made on 43 *El. c. 2.* was quashed, because the Order was only said to be made at the Quarter-Sessions, and not at the General Quarter-Sessions; and the 43 *El. c. 2.* appoints Orders in these Cases to be made at the General Quarter-Sessions. *Rex v. Tarnock, Salk. 474.* Authority given to Justices of the Peace must be exactly pursued, and so it ought to appear in their Orders and Determinations; and Orders of Justices being Judicial Acts, are not absolutely void in themselves, but voidable, and continue Orders till avoided. *Inhab. Cbittinston and Parkhurst, 2 Salk. 475.*

Orders must be made at the General Quarter-Sessions.

Authority given to Justices must be exactly pursued.

14. The Order of two Justices not appealed from, binds the Parish upon which it is made, till a new Settlement is gained. An Order reversed is final only between the Parties; but an Order confirmed, or not appealed from, is final to all the World. The Sessions may alter their own Orders the same Sessions; And the Sessions hath Power to affirm or quash, and not supersede or suspend an original Order of two Justices relating to the Removal of a poor Person, &c. *Inhab. Oswel and Woking, Salk. 472. Swanscomb and Shensfield Par. 492.* The Party removed may appeal to the Sessions from the Order of two Justices, for his Removal, although the latter Parish does not appeal. So resolved between *The King and The Inhabitants of Hartfield, B. R. Carthew 222.* It is a standing Rule in the Court of King's Bench, that if upon an Appeal, the Order of the two Justices is either affirmed or quashed, upon the Merits of the Case in Relation to Settlements, it shall be conclusive between the two Parishes. *Pasch. 10 Ann. Bishop Waltham cont. Foram.*

15. *Term. Pasch. 29 Car. 2.* a Motion was made in *B. R.* to set aside an Order of Sessions for the settling a poor Person in a Parish, sent thither by Warrant of two Justices, and confirmed in Sessions upon an Appeal; and the Court refused to enter into the Merits of the Case, the Order of Sessions being in this Case final, unless it be made appear that there is an Error in the Form of Proceeding. *Vent. 310.* An Order of two Justices, &c. was quashed, because it did not appear that it was made upon the Complaint of the Churchwardens or Overseers of the Poor; besides, there was no Adjudication. It was held by the Court for a general Rule in Cases of Orders for Removal, that if the Parish to which a poor Person is removed, doth not appeal in Time, such Order is conclusive to the contending Parishes. Upon Complaint to the

Order of Sessions final, unless Error in Form of Proceeding.

Sessions

Sessions cannot delegate their Order to other Justices.

Sessions that the Parents did not relieve a poor Child, they appointed two Justices to examine the Matter, &c. who made an Order for the Parents to relieve it; but it was quashed, because the Sessions could not delegate their Power to other Justices; therefore they should have made the original Order. *Style. 154.*

16. The Order of two Justices set forth, that the Person removed was lately settled in the Parish of C. &c. it should have been legally settled, &c. and for that Reason it was quash'd. *9 Ann.*

How Order of Removal ought to be directed.

17. Every Order of Removal ought to be directed to the Parish Officers removing, and to the Parish Officers to whom removed, and not to the Officers of that Parish alone to which the Person is removed; and for that Reason the Order was quash'd. *3 Salk. 256.*

18. The Return of the *Certiorari* in a Schedule annexed to the Writ was not made by two Justices, but by the Clerk of the Peace; but he not being the Person to whom the Writ was directed, it was quashed, and a new *Certiorari* granted, which being returned and filed, it was objected, that it did not appear by the Order that it was made by two Justices of the Division, &c. pursuant to the *Stat. 13 & 14 Car. 2. c. 2.* but adjudged, that as to this Matter the Statute was only directory and not restrictive, as the Words (*Quor. unus*) &c. are. *3 Salk. 258.*

19. An Order was quashed upon an Appeal; but that Sessions Order was likewise quashed, because it did not appear, that it came before them by Way of Appeal, and they have no Jurisdiction but upon an Appeal. *2 Salk. 475.*

20. There is a Difference as to the Place of Settlement where the Order of two Justices is confirmed, and where 'tis reversed upon an Appeal, or not appealed from; for where 'tis confirmed, or not appealed from, there that Parish, to which the poor Man was removed by the original Order, shall never say that it was not the last Place of his legal Settlement, because the Affirmance of the Order upon an Appeal is conclusive to all Parishes; but where the original Order is discharged upon an Appeal, there the Matter is at large again as to all Parishes, except that to which the poor Man was removed, which, upon the Appeal, was determined not to be the last Place of his lawful Settlement. *Swanscomb and Shensfield Par. 2 Salk. 492. 3 Salk. 260, 261. Rex, v. Inhab. Risip, &c. 1 Ld. Raym. 394, 425. Qu.* A Third Parish, which was not Party to an Appeal, shall not be concluded by it. *Inhab. Par. Kingston Bowsey, v. Inhab. Beddingham in Suffex, 1 Ld. Raym. 513.*

Appeal from the Order of two Justices ought to be lodged the next Sessions.

21. An Appeal from the Order of two Justices ought to be to the next Sessions, that is, it ought to be lodged then, but there is no Necessity that it should be determined at that Time, because

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because the Sessions may adjourn it to another. *King's Langley Par.* 2 *Salk.* 605.

22. Adjudged, that where a Village in a Parish had a Church before 43 *El.* and that such Village had been used and reputed as a Parish, and had all parochial Rights and Churchwardens, &c. that this is a Parish and chargeable to maintain its own Poor. *Cro. Car.* 92. *Litt. Rep.* 73. *Cro. Car.* 394. *W. Jones* 355.

23. The Sessions made an Order for a Feme Covert to keep and relieve her Grandchild, but it was quashed, because her Husband ought to be charged by the Order, and not the Wife. *Styl.* 251. It was ordered by the Sessions, that the Son should pay 2 *s.* per Week towards the Relief of his Father, 'till the Court should order otherwise; adjudged a good Order, tho' it was indefinite, and no certain Time limited how long he should pay the 2 *s.* but it had been otherwise if a certain Time had been limited. *Jenkins's Case*, 2 *Salk.* 534.

24. An Order of Removal was confirmed upon an Appeal, and the next Sessions after, there was an Order of Review made, and the Sessions Order was quashed, because obtained by Surprize; but adjudged that the Order of Review should be quashed, because after the first Sessions, when the original Order was made, the Sessions have no further Authority.

25. A poor Infant was left in *Christ's Hospital*, and upon Complaint of the Governots of the Hospital, two Justices made an Order that the Overseers of the Poor of that Parish should receive and maintain it; quashed, because it did not set forth that the Parents were not known, or that the Child was likely to be chargeable to the Parish.

26. *Whereas Complaint hath been made*, not said by whom, Order must set forth by whom
quashed. *Whereas J. S. has intruded into the Parish of A. and is likely to become chargeable; these are to remove him with three Children*, quashed as to the Children, for they have removed more than is complained of. The Parish of *Newington*, the Place of his legal Settlement, *per Cur.* is well; for how can it be said he was legally settled there, unless he was last settled there? *The Parish of Appertorce cont. Dunsavel in Devon.* An Order of Sessions to pay *W. G.* and *Mary* his Wife three Shillings per Week is ill, because not said, they are impotent and unable to maintain themselves. 1 *Keb.* 489. 2 *Keb.* 537. 643. 744. 5 *Mod.* 197. An Order by the Justices of the Borough of *Marlborough* for the Parish of *St. Peter*, to pay to the Officers of *St. Mary's*, the Sum of twenty Shillings weekly, until we the said Justices shall see fit to order to the contrary, is ill; for the Statute never gave the Justices such Authority; 'tis in Effect making a perpetual Order; for if one of the Justices die, or be removed, no other Justice can alter it till we the said Justices shall see fit to alter; quashed.

Order must say to what Parish likely to be chargeable.

Justices not to send for Officers out of another Parish.

Nor order Churchwardens to pay Money to the preceding.

The County must be set forth in the Body of the Order.

Overseers have no Power to find a poor Man a House.

27. *Whereas J. L. is likely to become chargeable*, not saying to what Parish; quashed. *Trin. 11 Ann.* If an Order say he was settled at *W.* he having lived there for two Years as an hired Servant, 'tis well enough. *Trin. 11 Ann.*

28. Order was to the Church-wardens of *Clypton* to repair to the Parish of *Ravistock*, and to relieve them, being so sick that they cannot be removed. *Curia*: The Justices have no Authority to send for Officers of another Parish, but are bound to maintain the Poor as long as they continue with them; and *per Powel*, no Parishioners are to be relieved till they are carried to the Parish; quash'd, *Pasch. 1712. Clypton St. Mary's and Ravistock in Devon.* Two Justices made an Order to compel the present Churchwardens of *Ely* to pay to the two precedent ones, or their Executors, 40 *l.* quash'd; *per Cur.* have no such Authority. *Hil. 1712.*

29. An Order of Sessions to pay *R. G. and E. his Wife*, three Shillings *per Week*; objected, not said, they are impotent and unable to maintain themselves, quash'd, 1 *Keb. 489. 2 Keb. 537, 643, 744. Pasch. 1 G. 1. 5 Mod. 197.*

30. A Complaint is made by the Officers of *Westwoodhay* to one Justice of Peace, and then two Justices adjudge and remove; and held well; otherwise, when one Justice sets his Hand to the Order in the Absence of the other. It does not appear in the Order that *Shellingham* was in the County of *Norfolk*, but *Norfolk* was in the Margin; the Court held the Objection fatal; the Difference is between civil and criminal Prosecutions, it must appear the Parish is in the County from whence the Person is removed. Order made by two Justices, &c. to Overseers to continue the weekly Payment of 2 *s.* to *R. G.* and all the Arrears, till they find him an House; quash'd, because the Overseers have no Power to find him an House; that must be done by the Lord of the Manor, or by the Justices.

An Order of Sessions for a Father to maintain his Daughter.

At the General Quarter-Sessions of the Peace, &c.

31. Berks, **C**omplaint having been made unto this Court by to wit, *A. B. C. D. &c. Churchwardens and Overseers of the Poor of the Parish, &c. that E. F. of the said Parish is a very poor impotent Person, and wholly unable to do any Work or Service to get her Livelihood, or otherwise to maintain herself: And it having been proved by the Oaths of the said A. B. C. D. &c. that T. F. Father of the said E. F. of the said Parish of, &c. is a Man of Substance and Ability to provide for his said Daughter; but he refuses to do the same, whereby the* said

Chap. 45. said E. F. therefore cause to Churchwardens every Week until she charge of

32. B. appertain ment of Highway vics or chargeable &c. affe before th by Just Quarter- where th

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said E. F. is become chargeable to the said Parish of, &c. It is therefore ordered by this Court, That the said T. F. do pay, or cause to be paid unto the said E. F. his Daughter, or to the Churchwardens, &c. for her Use, the Sum of 2 s. weekly, and every Week, for the Relief and Maintenance of the said E. F. until she be better able to provide for herself, and for the Discharge of the Parish aforesaid of and from the same.

32. By Stat. 16 Geo. 2. ch. 18. Justices may do all Acts appertaining to their Office, relating to the Relief and Settlement of Poor, Passing and Punishing of Vagrants, Repair of Highways, or other Laws concerning Parochial Taxes, Levies or Rates, notwithstanding such Justices are rated to or chargeable with the Taxes, &c. within any such Parish, &c. affected by any such Act of Justice. No Matter done before the making of this Act shall be quashed because done by Justice so rated, &c. Proviso not to enable Justices at Quarter-Sessions to act in determining Appeals from Orders where they are chargeable,

C H A P. XLVI.

Of Overseers of the Poor.

1. **C**HURCHWARDENS were anciently the sole Overseers of the Poor, and it lay wholly on them, under the Direction of the Minister, to take Care of all such as were in want of their Parish, and provide for their Relief, in order whereto they had the Charity of well-disposed Persons, the liberal Contributions of the Clergy and the religious, and the poor Man's Box intrusted to them. But when, on the Dissolution of religious Houses, and the alienating of Tithes to the Laity, the Contributions of the Clergy and the Religious failed (which was the main Fund on which all the Poor of the Realm had hitherto been maintained) it was found necessary by Act of Parliament to lay a Tax upon the Nation for their Support; and the Statute 43 El. c. 2. was made for their Relief, by which publick Officers are created to provide for the Poor of the Parish, who are to be nominated yearly in Easter Week, or within a Month after, by two Justices of the Peace, (*Quorum* 1.) they must be Householders, and are sometimes two, three or four, according to the Largeness of the Parish; and these Overseers, who are in that Act superadded for the levying and disposing of the said Tax, have in a Manner superseded the Churchwardens Care in this Particular. However, the Churchwardens are still by the Common Law Overseers of the Poor in every

Churchwardens anciently were the only Overseers of the Poor.

every Parish, and the said Act joins them in equal Power with the other Overseers appointed by that Act both for the levying and distributing of the said Tax, and all other Duties of the said Office; and by several Acts of Parliament whereby Forfeitures are inflicted to the Use of the Poor, the said Churchwardens are intrusted with the receiving and disposing of the said Forfeitures to the Use aforesaid. But they having other Business besides (*i. e.*) to take Care of the Church, and the other Matters belonging thereto, as has been before set forth, the whole Care of the Poor is now usually left to the Overseers; and the Churchwardens by the Custom of most Parishes are allowed no further to be troubled therewith than of their Good-will and Liking they should think fit.

When the Overseers are to be chosen.

2. By 43 *El. c. 2.* Overseers of the Poor of Parishes are to be chosen yearly in *Easter Week*, or within one Month afterwards, by Appointment under the Hands and Seals of two Justices of the Peace (one whereof to be of the *Quorum*) dwelling in or near the Parish, or Division where the Parish lieth. Justices of Peace neglecting to nominate Overseers according to the Statute, forfeit 5*l.* leviable on their Goods by Warrant from the General Sessions of the Peace. The Order made for appointing Overseers of the Poor must mention that they are substantial Housholders; for this is expressly required by Stat. 43 *Eliz. c. 2.* and for such Omission an Order was quashed on Motion in *B. R. Rex v. Sheringbrook*, 2 *Ld. Raym.* 1394.

When and how often to meet, &c.

3. Overseers of the Poor, &c. are to meet once a Month in the Parish Church on *Sunday* after Divine Service, unless hindered by some Cause to be allowed by two Justices, at which Meeting they are to consider of proper Methods for providing for the Poor; and if they neglect thus to meet, they forfeit 20*s.*

An Appointment of Overseers of the Poor by Justices.

4. **W**E A. B. and C. D. Esquires, two of his Majesty's Justices of Peace for the County of, &c. whereof A. B. is of the *Quorum*, do hereby appoint E. F. and G. H. of, &c. being substantial Housholders of the Parish of _____ aforesaid in the said County, for this present Year, according to the Direction of the Statute in that Case made. Given, &c.

5. By Stat. 17 *Geo. 2. c. 38.* from 24 June 1744. Churchwardens, &c. shall yearly, within 14 Days after other Overseers are appointed to succeed them, deliver to such Successors,

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for, a just, true and perfect Account in Writing, fairly entered in a Book or Books to be kept for that Purpose, and signed by them, under their Hands, of all Sums of Money by them received, or rated, and assessed and not received; and also of all Goods, &c. in their Hands, &c. and of all Monies paid, and of all other Things concerning their Office; and deliver over the same to such Successors, upon Oath, or Affirmation, if Quaker, before a Justice, upon Pain of Commitment by two Justices until Account. Overseer dying, removing, &c. two Justices to appoint another; Executors, &c. of Deceased to account in 40 Days. Appeal lies to next General or Quarter-Sessions. Where Corporations have not four Justices, Appeal may be to County Sessions. There is a Restraint as to Sessions making new Rates, for which see the Act at large. Distress may be in any Place within the County; or on Oath of Want of it, in any other County, &c. Appeal lies to next General or Quarter-Sessions. Where Distress is made for Money justly due for Poor, no Want of Form in Warrants for appointing Overseers, or of Distress, or in the Rate, nor Irregularity in distraining shall make Party a Trespasser *ab initio*. Succeeding Overseers shall levy Arrears to reimburse Predecessors: Occupiers to pay *pro rata*. Copies of Rates to be entered in a Book to be inspected by Persons liable, &c. Parish Officers not complying with the Act, where Penalty not provided before, forfeit 5*l*. Where there are no Churchwardens, Overseers are to act.

6. When the Overseers Books are passed, it is usual for the two Justices to signify it writ in their Book at the Foot of their Accounts. And if Money be due to the old Overseers, you write thus, *viz.* due to be paid from the new to the old Overseers 30*l*. 09*s*. 09*d*. October 11, 1732. Perused and allowed by us A. B. C. D. two of his Majesty's Justices of the Peace for the said County, whereof A. B. is of the *Quorum*. And if Money be due to the new Overseers, you may say, remaining in the old Overseers Hands to be paid to the new ones 19*l*. 09*s*. 09*d*. October 11, 1732. Perused and allowed by us, A. B. C. D. two of his Majesty's Justices of the Peace for the said County, whereof A. B. is of the *Quorum*.

7. If the Churchwardens or Overseers refuse to account, then two Justices of the Peace, whereof one is of the *Quorum*, may commit the Person so refusing to the County Gaol, there to remain without Bail or Mainprize until he make a true Account, and shall have satisfied and paid so much as upon the Account shall appear to be remaining in his Hand, which also by Warrant may be levied by Distress. 43 *El. c.* 2. And if he make a false Account, he may be bound over to the Sessions, and indicted there for it. 5 *Mod.* 179. *Dalt.* 154. They may be also indicted for not collecting a Tax, having Notice of the

If refuse to account, they are to be committed till they do.

the Persons taxed. 3 *Keb.* 49. *Note*: The Commitment of an Overseer of the Poor must be *until he account*, and, not *until delivered by Course of Law*, for this would be ill. *Comb.* 305, 374. 391.

The Substance
of their Ac-
count.

8. The Substance of the Overseers Account is what Sums of Money they have received, or rated or not received; what Stocks, Wares, &c. they have in their Hands; what poor Apprentices they have put out and bound; whether they have suffered any of their Poor to wander and beg; whether they have met once a Month to consult of these Things; whether they have assessed the Inhabitants and Occupiers of Land, &c. and with Indifferency; whether they have endeavoured to levy such Assessments; if they have relieved the Maimed and Impotent, and executed their Office in all Particulars; if they have duly executed Justices Warrants to them directed for levying Forfeitures, &c.

Must account
for the Burials.

9. And they must give an Account of the Name and Quality of every Person buried in their Parishes, and of Certificates come to their Hands from the Parsons of such Parishes, that the Persons therein mentioned were not buried contrary to Stat. 30 *Car.* 2. c. 3. for burying in Woollen, and of their levying the Penalty of 5 *l.* on Offenders.

Not obliged to
disburse their
own Money.

10. Churchwardens and Overseers in present Exigences are to provide for the Poor, and they shall be re-imburfed by a Rate; and it is Discretionary to give them Money weekly, or to provide for them Victuals, &c. *Style* 246. Overseers of the Poor are not obliged to disburse any of their own Money for the Support of the Poor; but if they do, a Rate ought to re-imburse them, tho' that Rate shall be called the Poor's Rate, and not the Overseer's Rate. A *Mandamus* does not lie to the Churchwardens and Overseers to make a Rate to re-imburse the Overseers; but the Overseer may cause a Rate to be made for that Purpose, and when the Money is levied, pay himself; and if the Justices refuse to sign it, then a *Mandamus* may be directed to them to do it. 1 *Keb.* *Clark* ver. *Churchwardens of Cripplegate.* *Modern Cases* 97. *Regina* ver. *Parochiam de Littleport.* 2 *Keb.* *Rex* ver. *Ogden & al.*

No *Mandamus*
to the new
Overseers to
make Rate to
re imburse the
old.

11. Upon a Motion for a *Mandamus* to the new Churchwardens and Overseers of the Poor to make a Rate to re-imburse the old ones the several Sums by them expended for the maintaining the Poor the last Year, it was denied, it having already been resolved in *Tawney's Case*, *Salk.* 531. 6 *Mod.* 97. That a *Mandamus* cannot be granted to the new Overseers to make a Rate to raise Money to re imburse the old Overseers, but only to raise Money for the Relief of the Poor; for so is the Act of Parliament expressly, and must be pursued; and an Overseer is not bound to lay out Money till he hath it; if he doth, he must make a new Rate for the Relief of the Poor, out of which he

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he may retain so much as will pay himself. The King *ver.* Churchwardens, &c. of *Rotherith* in *Surry*, *Hill.* 11 G. 1.

12. When a Parish extends into two Counties or Liberties, the Justices have not Power to act in that Part which lies out of their Jurisdiction as to the Nomination of Overseers, giving Warrants to raise Assessments, &c. But yet the Overseers of such Parish so extending into several Jurisdictions may act in the whole Parish; but they must exhibit one Account before the Head Officer of the Town, and one other before the Justices. *Stat.* 43 *El.* c. 2.

The Justices Power when a Parish extends into two Counties.

13. If any Action be brought against Overseers, &c. for any Thing done by Authority of this Act, the Defendant may plead Not guilty, or make Avowry or Justification, to which the Plaintiff shall reply that the Defendant did it in his own Wrong; whereupon the Issue shall be tried, and the whole Matter given in Evidence; and if it be found for the Defendant, or the Plaintiff is nonsuited after Appearance, the Defendant is to recover treble Damages and his Costs. *Noy* 137. *Okely*, id. *Yelv.* 176. 1 *Roll. Rep.* 272. 2 *Roll. Rep.* 112.

In Action against Overseers, if Defendant has a Verdict, he is to have treble Damages.

14. In Actions brought against Churchwardens or Overseers of the Poor for mispending the Parish Money, any Parishioner not receiving Alms, &c. shall be admitted as Evidence in all Courts of Record, by *Stat.* 3 & 4 *W. & M.* c. 11.

In what Case Parishioners may be Witnesses.

15. An Overseer accounted before two Justices, and his Account was allowed; the Parish appealed to the Quarter-Sessions, and they disallowed the Accounts, and ordered him to pay so much over, and for not doing it committed him. In this Case it was held, that they should have levied the Arrears by Distress; and in Default of a Distress, have committed him, for the Sessions must execute their Judgment in the same Manner as the two Justices must do; and the Order was quash'd as to that Part. *Queen* against *Hodges*, *Mich.* 4 *Ann. B. R. Salk.* 533.

16. And if any Stock shall be in the Hands of any Poor to work, and such Poor shall refuse to deliver the same, it seems two such Justices may make the like Warrant to levy, &c. and in Default thereof, may commit *ut supra*.

17. *Mandamus* to the Justices, &c. on the *Stat.* 43 *Elix.* c. 2. to compel the old Overseers to account with the Successors, was quash'd; because by the Statute the Account is to be given to the two Justices, and not to the succeeding Overseers; besides, two of the Persons named in the Writ, and who are to account, do not appear to be Overseers. 2 *Salk.* 525.

18. The Defendants were indicted at the Sessions, for that they being chosen Overseers, &c. and having taken upon them the Office, & *uterque eorum*, did collect and receive several Sums for the Relief of the Poor, and did refuse to account within four Days after the End of their Year, &c. It was objected, that this Indictment would not lie, because this was an

Offence Overseers may be indicted for not accounting.

Offence

Offence created by Act of Parliament, and the Punishment being directed by the Statute, *viz.* That the Offender shall be committed by two Justices, there to remain without Bail, that Remedy only must be pursued. 'Tis true, that is a proper Remedy to come at the Right, but the not accounting was a Contempt of the Law, for which an Indictment will lie. 5 *Mod.* 179. An Overseer of the Poor may be indicted for disobeying an Order of Sessions concerning the Settlement of a poor Man. *Comber.* 213. So for making false Charges in his Accounts. *Comber.* 287.

19. If any Overseer lays out Money, he may be re-imburfed by general Order of Sessions. *Peckham's Case* at *Maidstone* Assizes. And *per Hide*, it is good within the Statute. 1 *Keb.* 336.

When Order must set forth that Overseer was an House-keeper, or an Inhabitant.

20. An Order was made by two Justices, that *W. R.* should take upon himself the Office of Overseer of the Poor; but ill, because it did not appear that *W. R.* was an House-keeper, or an Inhabitant of that Parish, and the Court will not intend him to be one. *Mod. Cases* 77.

21. An Order to re-imburse was grounded only on Account stated by the Oath of the Party, and never allowed by the two next Justices of the Peace; whereupon the Majority of the Justices at *Hicks's-Hall* refused to grant any new Order. 1 *Keb.* 236, 243. *Clerk v. The Churchwardens of Cripplegate*, *Comb.* 257. It was agreed in *Taverner's* and *Quaterman's Case*, that the Churchwardens ought in present Exigencies to provide for the Poor, and they shall be reimbursed. Order was made by the Justices to the Inhabitants of *B.* to re-imburse the Overseers of the Poor for Money expended in Suit against some who refused to pay their Rates; and the Court was moved for an Attachment against them, which at last they granted. 2 *Keb.* 461. *Rex ver. Ogden, Monk and Lucas*; and the Court conceived that Costs may be allowed upon the *Certiorari*. 2 *Keb.* 500.

B. R. will compel Justices to sign the Poor's Rates.

22. The Court of *B. R.* upon Motion will compel the Justices to sign the Poor's Rates, unless they shew Cause to the contrary. The Case of the Inhabitants of *Peterborough*, *Mich.* 20 *Car.* 2. 1 *Siderfin* 377.

23. Overseers of the Poor were indicted before the Justices of the Borough of *Reading*, for not gathering several Sums of Money taxed on several Inhabitants, and not ascertaining them; Counsel excepted to it, but the Court ordered the Parties to plead, having Notice of the Persons taxed. 3 *Kemble* 49. *Rex ver. Brown*.

Justices cannot commit Churchwarden as such, but as Overseer.

24. Churchwarden of *Hadly* was committed by the next Justices as Churchwarden without Bail, for refusing to give an Account of Money received and disbursed by him, &c. Upon an *Hab. Cor.* he was discharged; for the Justices in their *Mittimus* ought to have set forth that he was Overseer of the Poor,

Poor, and Churchwarden King ver. up his Account do account for if for *Comb.* 37. Account there was an Order, Power to strain; but confirmed.

25. T. Overseers; the Inhabitant The King

26. C. their own Doors, necessity, the

27. C. Churchwarden are to be any Justices sons refused

28. C. Churchwarden using, for the Poor of 3 *Car.* 1

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Poor, and the Justices have no Power over him, *quatenus* Churchwarden, but *quatenus* Overseer. 1 *Keb.* 574. *The King ver. Peck.* Overseer was indicted for not making up his Account; *Holt, C. J.* said, here the Justices are to commit specially, according to their Power, until the Party do account, and not until delivered by due Course of Law; for if so committed we should discharge him upon a *Hab. Cor.* *Comb.* 374, *Rex ver. Hummings.* Three Justices took the Account of Churchwardens and Overseers, and adjudged that there was due from them to the Parishioners 69*l.* and made an Order, to which it was excepted, that the Justices had no Power to make such Order; but only issue Warrants to distrain; but the Court ruled the Order to be well made, and confirmed it. Churchwardens of *Topsbam,* 2 *Salk.* 484.

Must commit
till they do ac-
count.

25. The Sessions have no original Power to appoint Overseers; they appoint two of the Inhabitants, not said substantial Inhabitants as the Statute directs, and quashed *per Cur.* *The King and The Inhabitants of Chilmorton, Mich.* 1726.

Sessions have
no original
Power to ap-
point Over-
seers.

26. Overseers may license poor Persons to beg for Alms in their own Parishes; and if any Inhabitants serve Poor at their Doors, not being of their own Parish, and having such a Licence, they shall forfeit 10*s.* *Dalt.* 157.

27. Children of all such whose Parents shall not by the Churchwardens and Overseers be thought able to keep them, are to be set at Work by the Overseers. 43 *El. c. 2.* And any Justice may send to the House of Correction, &c. Persons refusing to be employed in Work.

28. One Justice of the Peace may give his Consent to the Churchwardens and Overseers of the Poor, for their erecting, using, and carrying on any Trade, Mystery or Occupation, for the employing, setting to work, and better Relief of the Poor of the Parish wherein such Churchwardens, &c. reside. 3 *Car. 1. c. 4.*

One Justice
may give his
Consent to Pa-
rish Officers for
their setting up
any Trade, &c.

C H A P. XLVII.

Parishes and Parishioners.

1. **T**HE Stat. 43 *El. c. 2.* provides that there shall be Overseers of the Poor in every Parish; but because several Parishes which are large, and had many Villages in the same, could not reap the Benefit of that Act; therefore by 13 & 14 *Car. 2. c. 12.* it is enacted, that in every Township and Village of *Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland, Durham, Cumberland and Westmoreland,* and

Townships
and Villages
in Lancashire,
&c. to choose
Overseers, &c.
as Parishes do.

other

other Counties in *England and Wales*, where (by Reason of the Largeness of the Parishes) they are not within the 43 *El. c. 2.* there shall be yearly chosen and appointed according to the Rules of that Act, two or more Overseers of the Poor within every of the Townships and Villages, who shall from Time to Time do, perform and execute all and every the Acts, Powers and Authorities, for the necessary Relief of the Poor within the said Townships or Villages, and shall be liable to such Pains and Penalties for Non-performance thereof, as limited by 43 *El. c. 2.*

A Parish in Reputation may choose Overseers, &c.

2. A Parish contained two Members *A.* and *B.* and *B.* had a Chapel of Ease and a Burying-place, being a long Time reputed a Parish (though only a Member of *A.*) and had used to choose Overseers; it was resolved that Parishes only in Reputation are within the Stat. 43 *El. c. 2.* as other Parishes are, if the Usage of such Parish to choose Overseers had been constant and without Interruption. 2 *Roll. Rep.* 160. *Littleton's Rep.* 73. *Hil. 2 Car. 1. C. B. Hilton* against *Paul.* A Parish must have Parochial Rights. 4 *Mod.* 157.

Justices have no Power to send Poor to Extraparochial Places;

3. An Order was made by Justices for sending a Person to the Precinct of *Bridewell* as his last legal Settlement, he having served seven Years Apprenticeship there, which Order set forth *Bridewell* to be an extraparochial Place. *Per Holt, C. J.* if a Place be extraparochial, and has not the Face of a Parish, the Justices have no Authority to send any Man thither: Possibly a Place extraparochial may be taxed in Aid of a Parish; but a Parish shall not be taxed in Aid of that. *Inhab. Bridewell and Clerkenwell, Salk.* 486. 1 *Ld. Raym.* 549.

Unless a Village or Town.

4. By Virtue of the Stat. 13 & 14 *Car. 2. c. 12.* the Justices may exercise the Powers given by 43 *El. c. 2.* and that in all extraparochial Places containing more Houses than one, so as to come under the Denomination of a Village or Town. *Salk. ibid.*

Who is a Parishioner.

5. A Parishioner who is intitled to vote at a Vestry (except in Places where there is a special Provision to the contrary) is any Male Inhabitant, who pays to Church and Poor. But a Parishioner, who has or gains a Settlement so as to be intitled to a Maintenance in Case of Poverty and Impotency, is any Person who is the Issue of Parents having a Settlement; any who serves an Apprenticeship to a Master who did not come in by Certificate; any who serves a Year upon one Contract. *Trin. 8 Geo. 2.* Absence a few Days with the Master's Leave will not defeat the Settlement; any who executes a Parochial Office in his own Right; any who pays Parish Taxes (those to Scavenger and Highways excepted) any who rents 10 *l. per Ann.* in a Parish, as will be more fully explained by Law Cases herein after cited,

6. *Hatfield* Parish of *field*; but making to a Constable the Poor *Hatfield* Taxation Land, and by two Justices it, they choose upon which the Church the Court within the and not within *v. Walker*

7. A within the when the in Reputation the Nonparish S. C. *Hatfield* inhabitants was a Parish the Rectory 3 *Cro. 31* king of *Hatfield* will not be the Rectory 4 *Mod. 1*

8. *Mod. 1* Poor in the Extraparochial therefore the Court was the Statute to name the extraparochial most of the they ought

9. *Mod. 1* one Church for that which is was resolved each Parish dren, w

6. *Hatfield* was a Parish and *Totteridge* a Village within the Parish of *Hatfield*, and paid their Tithes to the Parson of *Hatfield*; but *Totteridge* for above sixty Years, and at the Time of making the Stat. of 43 *El. c. 2.* was a reputed Parish, and had a Constable and Overseers of the Poor, and they provided for the Poor of *Totteridge*, and never contributed to the Poor of *Hatfield*: The Churchwardens, &c. of *Hatfield* make a Taxation for the Poor, and tax *Nichols* Plaintiff, who had Land, and was an Inhabitant of *Totteridge*, which was affirmed by two Justice according to the Statute; *Nichols* refusing to pay it, they distrain upon him by Warrant of the Justices of Peace, upon which *Nichols* brought Trespass against the Defendants, the Churchwarden and Overseer of *Hatfield*; and adjudged by the Court that the Action lies: For a Precinct of a Parish is within the Stat. 43 *El. c. 2.* and is to be assessed by itself, and not with the Mother Church. *Jones's Rep. 355. Nichols v. Walker & al.*

Case of *Hatfield* and *Totteridge*.

7. A Parish in Reputation, though really no Parish, is within Stat. 43 *El. c. 6.* if it were a Parish in Reputation when the Act was made; and the Overseers of such Parishes in Reputation may make Rates for their Poor, and distrain for the Nonpayment of them. *Cro. Car. 92. Hilton and Parule, S. C. Hut. 93. S. C. Litt. 73.* And in such Case the Inhabitants of the Village, which hath Parochial Rights, and was a Parish in Reputation, shall not be taxed to the Poor of the Rectory. *W. Jones 355. Walker v. Carter, S. C. 3 Cro. 394. 1 Roll's Rep. Weedon v. Walker.* But the making of Rates in a Village which hath no Parochial Rights, will not exempt the Inhabitants from paying to the Poor of the Rectory; for it is not so much as a Parish in Reputation. *4 Mod. 157. Rad v. Forster.*

A Parish in Reputation is within 43 *El. c. 2.*

8. *Mandamus* to the Justices to appoint Overseers of the Poor in the Town of *Rufford*; they return that *Rufford* is an Extraparochial Place, and in the Forest of *Sherwood*, and therefore they are not to provide for their Poor; but the Court was of Opinion, that Places Extraparochial are within the Statute; for by the general Words the Justices have Power to name Overseers in all Parishes, which must extend to Extraparochial Places, as well as to Parishes in general, and most of the Forests in *England* are Extraparochial; but yet they ought to maintain their own Poor. *5 Mod. 273.*

9. Where a Parish, as *St. Botolph without Aldgate*, has but one Churchwarden, and several Overseers of the Poor, some for that Part of it which is in *London*, and others for that Part which is in *Middlesex*, and the Parish Rates are several; it was resolved, that without any particular Usage to the contrary, each Part must equally contribute towards the Relief of Children, whose Mothers died in either County; because the

How Parishes, Part in one County and Part in another, shall be taken.

Justices have
no Power to
dismember
Parishes.

Stat. 43 *El. c. 2.* names Parishes; but because they had distinct Officers and distinct Rates, and used to make distinct Accounts to the Justices of each County, therefore they shall be taken as distinct Parishes. *Raym. 447.*

10. Some Parishes are so very extensive, and the several Parts at a great Distance, 'twas impossible for the Poor effectually to be relieved by the ordinary Methods of taxing the whole Parish, and the Justices of Peace have no Power to dismember Parishes; not though they had been dismembered formerly; and this was the Reason of the Clause inserted in Stat. 43 *El. c. 2.* relating to the Isle of *Forwines*; and also of making the Stat. of 13 & 14 *Car. 2. c. 12.* aforementioned.

11. By 4 *G. 1. c. 14.* a Provision is made towards the Maintenance of the Poor of the Parish of *St. Giles in the Fields*, by appropriating the *South Gallery*, which shall be, when the Church is rebuilt, to that Use.

C H A P. XLVIII.

Penalties and Forfeitures to the Poor.

1. **B**ESIDES the Method of relieving the Poor by Parish Rates, the Penalties and Forfeitures imposed by several Statutes are applied to the Use of the Poor, a List of some of which here follows, *viz.*

2. Justices of Peace not appointing Overseers of the Poor yearly, incur a Penalty of 50 *l.* and Overseers not meeting once a Month to do their Duty, forfeit 20 *s.* for the Use of the Poor of the Parish, by 43 *El. c. 2.*

3. Conitables, &c. not levying the Penalties on Alehouse-keepers suffering People to tipple in their Houses, forfeit 40 *s.* Alehouse-keepers permitting tippling 10 *s.* and Persons tippling 3 *s.* 4 *d.* to the Use of the Poor. 1 *Jac. 1. c. 9.*

4. A Person convicted of Drunkenness forfeits 5 *s.* to the Poor, and one keeping an Alehouse without Licence 20 *s.* Officers not presenting him 40 *s.* 1 *Jac. 1. c. 7.*

5. Persons forbearing to go to Church forfeit 1 *s.* for every Offence, 3 *Jac. 1. c. 4.* and profane Cursing and Swearing, if a Servant, &c. is liable to 1 *s.* &c. every other Person 2 *s.* second Offence double, and for the third Offence treble. 21 *Jac. 1. c. 20.* 6 & 7 *W. 3. c. 11.*

6. All Persons playing at any Games or publick Sports on *Sundays*, forfeit 3 *s.* 4 *d.* to the Poor. Butchers killing or selling Victuals on *Sundays*, forfeit 6 *s.* 8 *d.* and Carriers, &c. travelling on that Day forfeit 20 *s.* Stat. 3 *Car. 1. c. 1.*

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7. Keeping false Weights and Measures is 5 s. Penalty, and Clerks of Markets sealing false Weights or Measures, or taking more than they ought for Sealing, in the first Case, forfeit 5 l. and the latter 10 l. Stat. 16 Car. 1. c. 19.

8. Persons erecting Wires along the Sea-Shore, or in any Haven, &c. and wilfully destroying Spawn of Fish, forfeit 10 l. Half to the Poor. 3 Jac. 1. c. 12.

9. Those who take Fish in any Water without the Owner's Consent, forfeit, not exceeding 10 l. and Destroyers of Conies in the Night on the Borders of Warrens, &c. forfeit the same Sum for the Use of the Poor. 13 Car. 1. c. 25.

10. Importing Cattle dead or alive, except for Provision, to forfeit one Moiety to the Poor. 18 Car. 2. c. 2. Cattle imported from *Ireland* are liable to Forfeiture and Seizure for the Poor, &c. and Parish-Officers neglecting their Duty, forfeit 40 s. for every Bullock, Cow, &c. and 10 s. for every Sheep, &c. Half to the Poor. 32 Car. 2. c. 2.

11. Persons suspected of stealing Wood, if they cannot give a good Account how they came by it, to forfeit not exceeding 10 s. to the Poor. 15 Car. 2. c. 2.

12. Those who do any Thing besides Works of Charity and Necessity on a *Sunday*, forfeit 5 s. crying or exposing to Sale any Wares (except Milk, and by a late Act, Mackarel) to forfeit the same to the Poor. Drovers, Waggoners, Hitters, &c. travelling on that Day, forfeit 20 s. and others using Boats and Wherries without Licence from a Justice, forfeit 5 s. Stat. 29 Car. 2. c. 7.

13. Where a Person is not buried in Woollen, and Affidavit not made that he is so buried, a Penalty is incurred of 5 l. one Moiety to the Poor. 30 Car. 2. c. 3.

14. Persons laying Dirt, Ashes, &c. before their Doors, forfeit 5 s. laying rough Stones, Timber, &c. in the Street, 20 s. not sweeping the Streets before their Doors on *Wednesdays* and *Saturdays*, 10 s. Scavengers not bringing their Carts, 40 s. Persons not repairing their Pavements, 20 s. and 20 s. per Week till repaired. Every one not hanging out Lights in the Winter, 2 s. per Night. Persons suffering Carts to stand in the *Hay-market* with Hay and Straw to be sold in the Winter after Two, and in the Summer after Three a-Clock, 5 s. one Moiety of all which Forfeitures to the Poor. 2 W. & M. c. 8.

15. If any Person unlawfully hurt or wound, &c. any Deer in any Forest or Park, he forfeits 20 l. and taking or killing Deer, 30 l. one Third to the Poor. 3 & 4 W. & M. c. 8.

16. Persons unqualified having Game found on them, and not able to give a good Account of it, forfeit not under 5 s. nor exceeding 20 s. Apprentices hunting, &c. are liable to the same Penalty, Half to the Poor. Sellers of Butter committing

mitting Frauds, forfeit 20*s.* for every Firkin; Warehouse-keepers, Weighers, &c. in any Port refusing to receive and take Care of Butter and Cheese, forfeit 10*s.* for every Firkin of Butter, and 5*s.* for every Weigh of Cheese; and Masters of Ships that come to lade Butter, &c. refusing to do it, forfeit 2*s.* 6*d.* for every Firkin of Butter and Weigh of Cheese; one Half to the Poor, by 4 & 5 *W. & M. c. 7.*

17. Hawkers, Pedlars, &c. trading without Licence, forfeit 12*l.* refusing to produce their Licence, 12*l.* Penalty, and Constables, &c. not putting the Laws in Execution, forfeit 40*s.* one Moiety to the Poor. 8 & 9 *W. 3. c. 25.*

18. Persons selling Squibs forfeit 5*l.* and throwing or aiding those who do throw, or suffering them to be thrown out of Houses, forfeit 20*s.* one Half to the Poor. 9 & 10 *W. 3. c. 7.*

19. Selling Ale or Beer in Vessels less than Measure, incurs a Forfeiture not above 40*s.* nor under 10*s.* one Moiety to the Poor. Head Officers of Towns, &c. refusing to stamp Measures, forfeit 5*l.* one Half to the Poor. Brewers keeping private Houses, or altering Vessels without Notice, forfeit 50*l.* one Third to the Poor. Gaugers taking a Bribe to make a false Return, forfeit 10*l.* Distillers refusing to permit Gaugers to enter their Distilling-Houses, forfeit double Value, &c. 1 *W. & M. c. 24.* 11 & 12 *W. 3. c. 15.*

20. Masters refusing poor Apprentices placed out according to the Statute, forfeit 10*l.* leviable by Distress and Sale of Goods for the Use of the Poor. 8 & 9 *W. 3. c. 30.*

21. If a Churchwarden or Overseer of the Poor refuse to receive a poor Person removed by Order of two Justices, they forfeit 5*l.* for the Use of the Poor from whence the Person was removed. 3 & 4 *W. & M. c. 11.*

22. Churchwardens within the Weekly Bills of Mortality not making Stop-blocks, Fire-pipes, and not keeping in Repair a large Engine, &c. forfeit 10*l.* And Head-builders or Workmen not building Houses with Party-Walls, and the Walls of the Thickness prescribed by the Act, forfeit 50*l.* one Moiety to the Poor. 6 *Ann. c. 31.*

23. Higlars, Chapmen, Inn-keepers, &c. having in their Custody Hare or other Game, forfeit for every Hare, &c. 5*l.* And unlicensed Game-keepers killing Hares, &c. or exposing them to Sale, incur the like Penalty; one Moiety to the Poor. 5 *Ann. c. 14.* 9 *Ann. c. 25.*

24. By 1 *Geo. 1. c. 15.* a sixth Part of the Value of the Cloth is forfeited in several Cases, for undue Measuring and Sealing of mixed and medley Broad Cloths; and the Penalty is given, if in London, to Christ's Hospital; if in any other Place, to the Use of the Poor of the Parish, Township, or Place where the Offence shall be discovered.

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25. By the same Act, 40 s. Penalty on any Clothworker, &c. who pays Cloth in Lieu of Money to any Person employed in such Manufacture, and other Forfeitures in other Cases. See that Act.
26. By 1 Geo. c. 18. Masters of Ships, &c. who buy fresh Fish (*named in the Act*) from Foreigners to import, forfeit 20 l. a Moiety to the Poor.
27. And, by the same Act, Fishmongers, &c. selling Fish, under the Size and Lengths (there mentioned) forfeit the unfishable Fish to the Poor, and 20 s. a Moiety to the Poor.
28. And by the same Act, unlawful Takers, Buyers, or Sellers of Salmon, forfeit 5 l. and the Fish; a Moiety to the Poor. See the Act.
29. Taylors making, selling, or setting upon Clothes Buttons or Button-holes of Cloth, Stuffs, &c. forfeit 40 s. per Dozen; a Moiety to the Poor. 4 Geo. 1. c. 7. The like Forfeiture (a Moiety thereof to the Poor) enacted to be paid by the Wearer, by 7 Geo. 1. c. 12.
30. Taylors giving greater Wages than allowed to Journey-men, forfeit 5 l. one Half to the Poor. 7 Geo. 1. c. 13.
31. Persons receiving or buying Goods clandestinely run, knowingly, without paying the Customs, forfeit 20 l. one Moiety to the Poor. 8 Geo. 1. c. 18.
32. Farmers, &c. not bringing Butter to be searched, &c. in York, forfeit 3 s. 4 d. for each Firkin; a Moiety to the Poor. 8 Geo. 1. c. 27.
33. Parish Officers bringing to account Money given to Poor not registred, forfeit 5 l. to the Poor. 9 Geo. 1. c. 7.
34. Persons keeping foreign Lotteries, or selling Tickets in such Lottery, forfeit 200 l. one Third to the Poor. 9 Geo. 1. c. 19.
35. Clothiers in the West-Riding of *Yorkshire* failing an Inch in Breadth, or having a Yard too much in the Length of a Cloth, forfeit 20 s. for each Inch and Yard respectively; a Moiety to the Poor. 11 Geo. 1. c. 24.
36. Millman not duly sealing such Cloth, &c. or Person taking off, defacing or counterfeiting such Seal, forfeits 5 l. a Moiety to the Poor. *Ibid.*
37. A Person appointed by a Justice of Peace, &c. to measure between Buyer and Seller, refusing to be sworn and act, forfeits 40 s. a Moiety to the Poor: And for want of lawful Measure, the Owner forfeits one sixth Part of the Value of the said Cloth to the Poor, to be paid by the Buyer to the Overseers, and retained out of the Price. *Ibid.*
38. Clothiers exposing to Sale Cloth not marked with the Maker's Name and Place of Abode, forfeit 5 l. a Moiety to the Poor; and any Person who defaces, counterfeits, &c. such Marks before Sale, forfeits 5 l. a Moiety to the Poor. *Ibid.*

39. Persons unlawfully stretching such Cloth, forfeit for each Inch or Half-Yard over stretched, respectively, 20 s. a Moiety to the Poor. *Ibid.*

40. Such Cloth shall be dressed in all Parts alike, and Clothworker is to affix a Seal of Lead; Offenders forfeit 5 l. a Moiety to the Poor. *Ibid.*

41. Owners of Tenters are to number the Yards on them, or forfeit 5 l. for each Tenter not numbered; a Moiety to the Poor. *Ibid.*

42. Refusing Searcher to search for Cloth with any of the said Faults, Forfeiture is 10 l. a Moiety to the Poor; and 5 l. in Case of Detection of any of the said Abuses. *Ibid.* Searcher acting against his Oath, forfeits 20 l. a Moiety to the Poor. *Ibid.* Persons making Cloths, not having served seven Years, &c. forfeit 10 l. per Month; a Moiety to the Poor. *Ibid.*

43. Using Cards with Wire Teeth in dressing such Cloth, Forfeiture is 50 l. a Moiety to the Poor. *Ibid.* See the Act.

44. Owners of Houses in London, &c. having Door-Case, Lentil, &c. in the Party-Wall, forfeits 50 l. and not conveying Water from the Roof, &c. by Party-Pipes, &c. forfeit 10 l. Moieties to the Poor. 11 Geo. 1. c. 28.

45. Second Builder is not to take Benefit of the first Builder's Party-Wall, under the Penalty of 50 l. a Moiety to the Poor. *Ibid.*

46. Makers of Bricks or Pantiles contrary to the Direction of the Act 12 Geo. 1. c. 35. (if not within fifteen Miles of London) forfeit 20 s. per Thousand for such Bricks, and 10 s. per Thousand for Pantiles; a Moiety to the Poor. 12 Geo. 1. c. 35. But see 2 Geo. 2. c. 15. 3 Geo. 2. c. 22.

47. Contractors to ingross, &c. Bricks or Tiles within fifteen Miles of London, forfeit (each Person interested) 20 l. and (each Clerk or Agent) 10 l. a Moiety to the Poor. *Ibid.* See the Act, and the Act of 3 Geo. 2. c. 22. which alters several of the Directions given in the former.

48. Clothiers using Warping-Bars or Thrums of Dimensions prohibited by this Act, forfeit 10 l. Working up Ends of Yarn, or other Refuse, forfeit 10 l. Not delivering out and receiving back the Materials by Weight, at 16 Ounces to the Pound, forfeit 5 l. Interrupting Constable, &c. (having Warrant) to search for Warping-Bars, &c. forfeit 5 l. Maker not paying the Weaver, according to the Number of Yards that the Chains are laid on the Warping-Bars, forfeit 5 l. Owners of Tenters not measuring and duly marking the same, (in Gloucester, Wilts and Somerset) forfeit 5 l. Persons refusing Entrance to Inspectors, forfeit 5 l. Inspector acting contrary to his Oath, forfeits 20 l. Millman sending home Cloth not inspected and measured, forfeits 40 s. a Moiety of all these Forfeitures to the Poor. 13 Geo. 1. c. 23.

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49. Brickmakers, &c. making Bricks or Tiles contrary to this Act, or to 12 Geo. 1. c. 35. forfeit 20*s.* a Thousand for Bricks, and 10*s.* a Thousand Tiles; a Moiety to the Poor. 2 Geo. 2. c. 15. See 3 Geo. 2. c. 22. which alters these former Acts in several Particulars.

50. Persons wilfully omitting or inserting Persons in the Lists of Jurors wrongfully, or taking Reward for omitting or inserting, forfeit 20*s.* a Moiety to the Poor. 3 Geo. 2. c. 25.

51. Carrying Coals within the Bills of Mortality in Sacks not sealed, or not made as required by this Act, forfeit 20*s.* a Moiety to the Poor. 3 Geo. 2. c. 26.

52. Brokers acting in *Bristol* not being duly admitted, forfeit 100*l.* and Persons employing such, forfeit 50*l.* Brokers omitting to enter Contracts in the Broker's Book, forfeit 20*l.* Brokers not wearing a Silver Medal, forfeit 5*l.* Brokers dealing in Exchange, or making Gain, other than in the Way of a Broker only, forfeit for the first Offence 20*l.* for the second 50*l.* for the third 100*l.* a Moiety to the Poor of the City of *Bristol*. 3 Geo. 2. c. 31.

53. Constables refusing, &c. to execute Warrants for providing Carriages for the Army; and Persons appointed by them refusing to provide Carriages and Men, or hindering the executing the Act, forfeit not more than 40*s.* nor less than 20*s.* to the Poor.

54. And Constable taking Money, &c. for excusing Persons from quartering, and Victualler, &c. refusing to quarter, forfeits not more than 5*l.* nor less than 40*s.* to the Poor. 6 G. 2. cap. 3.

55. Persons who hawk, sell, or expose to Sale any Brandy, Strong Waters, or other Spirits about the Streets in any Wheelbarrow, or upon the Water in any Ship, Boat, &c. or on any Bulk, Shed, Stall, or other Place, other than the Dwelling-house of the Persons so selling the same, for each Offence forfeit ten Pounds; to be convicted before one or more Justices in a Kalendar Month after the Offence; a Moiety to the Poor of the Parish. See the Act 6 Geo. 2. c. 17.

56. By a Statute 6 Geo. 2. c. 29. for the better Regulation of Lestage and Ballastage in the River *Thames*, 'tis enacted, that if the Quantity of the Ballast delivered shall be found deficient, the Master, Wardens, and Assistants of Trinity-House shall make it good; if they refuse or neglect so to do ten Days after demanded, the Corporation forfeits 50*l.* a Moiety to the Poor of the Parish.

57. And by a Clause of the same Act directing the Re-weighing of Lighters which Masters of Ships suspect to have been altered in their Marks, the said Corporation upon Refusal or Neglect forfeits 50*l.* a Moiety to the Poor of the Parish.

C H A P. XLIX.

Poor Prisoners.

How poor Prisoners are to be provided for.

1. **T**HE Statutes relating to the Relief of poor Prisoners are 14 *El. c. 5.* 43 *El. c. 2.* and 19 *Car. 2. c. 4.* By 14 *El. c. 5.* Justices of Peace in their General Quarter-Sessions, may tax every Parish in the County towards Relief of poor Prisoners in the common Gaol for Debt, so as it does not exceed 6 *d.* or 8 *d.* a Week for every Parish, to be levied by Churchwardens every *Sunday*, and paid once a Quarter to the High Constables or Head-Officers of every Town, &c. who are to pay it to the Collectors appointed by the Justices in their Sessions, under the Penalty of 5 *l.*

2. By 43 *El. c. 2.* Justices of Peace have Power at *Easter* Sessions yearly, to rate every Parish at a certain Sum to be paid weekly; no Parish to pay more than 6 *d.* nor less than a Halfpenny towards Relief of poor Prisoners in the *King's Bench* and *Marshalsea*, each respectively to receive out of every County 20 *s.* yearly. Treasurers for the County are to be chosen at the said *Easter* Sessions, who refusing to execute the Office, distribute Relief, or to account, shall forfeit 3 *l.* to be levied by Distress.

3. By 19 *Car. 2. c. 4.* Justices in their Sessions may also provide a sufficient Stock to set poor Prisoners to work, committed for Felony and other Misdemeanors, by such Ways and Means as other Country-Charges are raised, provided no Parish be rated above 6 *d.* a Week, and they may appoint Overseers to examine their Accounts and punish Abuses.

4. Collectors for Prisons are weekly to distribute and pay all such Money as they shall receive for the Relief of the said Prisoners, upon Pain of forfeiting 5 *l.* as well the Collectors appointed, as the Churchwardens, Constables, &c.

C H A P. L.

Rates and Assessments.

Every Inhabitant to be rated to the Poor.

1. **B**Y 43 *Eliz. c. 2.* every Inhabitant and Occupier of Houses, Lands, Tithes, Coals, Mines or Underwoods, is to be taxed weekly, or otherwise, for the Relief of the Poor, according to the visible Estate he hath in the Parish where taxed.

2. This

2. This one Person Goods, the viz. 100 for his Stock but a Trade in Trade of the Hamlet 1281.

3. The Warrant levy the Tax son refuses no Distress committed Payment. 1744. C Notice in lowed by so as to permit al seasonable forthwith of Six-pence the Party &c.

4. In two Justices wards the relieve the other Parish one Parish say express its own Poor Comber. yearly. A particular Ibid. 300

5. If any Rate are to tax 6. The is usually the Justice tax part which is may tax

2. This Tax may be made upon Lands or Goods, tho' How to be rated.
 one Person is not to be charged for both. When charged on
 Goods, they are rated according to the usual Value of Land,
viz. 100 *l.* Stock of Goods at 5 *l.* per Annum. A Farmer
 for his Stock is not chargeable and taxable to the Poors Rates ;
 but a Tradesman is chargeable and taxable for his Stock
 in Trade ; by *Powell, Powys and Gould*, contrary to the Opi-
 nion of *Holt, C. J. Hil. 5 Ann. Regina v. Inhab. Barkin*, of
 the Hamlets of *Donnesdon* and *Needham*, 2 *Ld. Raym.* 1280.
 1281.

3. The Churchwardens and Overseers of the Poor, by How the Rate
 Warrant from any two Justices of Peace (*Quorum* 1.) may is to be levied.
 levy the Tax by Distress and Sale of Goods, where any Per-
 son refuses Payment of the Sum he is assessed ; and if there be
 no Distress, whereby the same may be levied, he shall be
 committed to the common County Gaol, there to remain till
 Payment. By Stat. 17 *Geo. 2. c. 3.* from the 1st of May,
 1744. Churchwardens, Overseers, &c. shall give publick
 Notice in the Church, of every Rate for Relief of Poor, al-
 lowed by Justices, next Sunday after allowed : No Rate valid,
 so as to be collected without such Notice. And they shall
 permit all the Inhabitants to inspect every such Rate at all
 seasonable Times, paying one Shilling, and upon Demand
 forthwith give Copies of the Whole, or any Part, at the Rate
 of Six-pence for every 24 Names, on Forfeiture of 20 *l.* to
 the Party grieved, to be recovered by Action of Debt, Bill,
 &c.

4. In Case a Parish is not able to maintain its own Poor, In what Case
 two Justices may tax any other Parish within the Hundred to- Justices may
 wards their Relief ; and if the Hundred be not of Ability to tax other Pa-
 relieve their Parishes, the Justices in their Sessions may tax any rishes.
 other Parish or Parishes within the County. An Order that
 one Parish shall contribute to the Poor of another Parish, must
 say expressly or impliedly, that the latter is unable to maintain
 its own Poor ; as where it is said, that *they were oppressed, &c.*
Comber. 241. Such Contribution may be by a Gross Sum
 yearly. *Ibid.* 242, 309. And the Justices may either charge
 particular Persons, or the whole Parish, and they to levy it.
Ibid. 309.

5. If any Person or Persons find themselves aggrieved with Sessions may
 any Rate or Tax, the Justices in their General Quarter-Sessions relieve Persons
 are to take such Order as they shall think fit. grieved, &c.

6. The Overseers of the Poor are to make the Rate, which By whom the
 is usually approved by the Inhabitants, and to be allowed by Rate is to be
 the Justices ; and it has been adjudged, that the Justices may made, &c.
 tax particular Persons, and need not assess the whole Parish, Justices may
 which is to contribute to the Poor of another Parish, or they tax particular
 may tax the whole Parish. 2 *Bulstr.* 532. Persons, &c.
 or the whole

7. The Parish.

7. A Parish in Reputation may make Rates for their Poor, and distrain for Non-payment of them; and the Inhabitants of a Village which hath parochial Rights, and is a Parish in Reputation, shall not be taxed to the Poor of the Rectory; but the making of Rates in a Village which hath no parochial Rights will not exempt the Inhabitants from paying to the Poor of the Rectory. *Cro. Car.* 92. *Roll. Rep.* 160. 4 *Mod.* 157.

Parents, &c.
of poor Persons
may be com-
pelled to re-
lieve them.

Cases of it.

8. The Father, Grandfather, Mother and Grandmother; and also the Children of poor old impotent Persons (being of Ability) shall at their own Charges, and without any Taxation, Rate, Relief, or Assistance from the Parish, maintain and relieve such poor Persons, in such Manner, and according to that Rate as by Justices of the Peace in their General Quarter-Sessions shall be assessed, upon Pain of forfeiting 20s. *per* Month. *Stat.* 43 *Eliz. c. 2.* A Husband marrying a Grandmother having an Estate sufficient, shall be chargeable to the Relief and Maintenance of a poor Grandchild during the Life of the Grandmother. *Comb.* 321, 405. But where a Grandmother is unable to relieve her Grandchild, and marries with a Man of Ability, he is not to be charged; also, if the Husband after Marriage becomes to be of Ability, the Grandmother at the Time of Marriage having nothing, he shall not be bound to keep the Child. 2 *Bull.* 345, 347. A Father was ordered to allow Maintenance to the Son's Wife, he being beyond Sea; and a Father-in-law has been adjudged to be within the Meaning of the Act. 43 *El. c. 2.* *Style* 283. A Jew had an only Daughter, who became a Christian, he turned her out of Doors; at Sessions an Order was made that her Father being very Rich should allow her 20s. *per* Month for her Maintenance, under the Penalty of 12 *l.* this Order is not maintainable upon *Stat.* 43 *El.* because it was not alleged that she was poor, or likely to become chargeable to the Parish. *Inhabitants of the Parish of St. Andrew's Under-shaft versus Jacob Mendez de Breta*, 1 *Ld. Raym.* 699.

Rates must be
according to
the yearly
Value.

9. All Persons (the Clergy themselves not excepted) must contribute to the Relief of the Poor. 2 *Keble.* 251. And all Things that bring an annual Profit may be taxed, and Tolls are taxable. 3 *Keble.* 594. It hath been resolved that Ground-Rents are liable to the Poor-Rates. *Comb.* 62. The Tax is to be in Proportion to the yearly Value, and not the Quantity of Land; and as it arises by Reason of the Land in the Parish, the Farmer or Renter to pay it, and not the Landlord for his Rent; it may be laid either upon Lands or Goods; but a Farmer being assessed for the Land he occupieth, shall not be assessed for his Stock on that Land necessary for Manure, nor the Profits for which he has been already taxed, but for other Stock he is taxable. And a Clothier, &c. having an Estate in Lands, and a great Stock

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of Wares, may be taxed for both. Persons must be charged only in that Place where the Goods are at the Time of Assessment, as in Case of Lands; and if a Man hath no Goods where assessed, and is distrained, he may have an Action of Trespass, &c. By *Stat. 17 Geo. 2. c. 17.* from 24 June 1744. Where any Dispute or Uncertainty is in what Parish, &c. drained or improved Lands lie, and ought to be rated; the Occupier of such Lands, and Houses built thereon, Tenements, Tithes arising therefrom, Mines therein, and saleable Underwoods therein, shall be rated, &c. to the Poor, and all other Parochial Rates, in such Parish, &c. as lies nearest to such Lands, as other Lands are liable to be rated. Disputes to be determined at General Quarter-Sessions, after Application, and Notice, &c. such Determination to be final, but not otherwise to affect the Boundaries of Parishes; a saving for *Stat. 16 & 17 Car. 2. of Deeping-fen.*

10. When the Cause of Taxation, made either by two Justices or Quarter-Sessions of other Parishes, for Inability of those wherein the Poor are resident, ceases, the Tax shall cease also, and the Contribution lessen as there shall be less Occasion. Cause of taxing other Parishes ceasing, the Tax shall cease.
Mod. 437. Litt. 73.

11. The Inhabitants of *Limehouse* and Overseers, &c. were convicted for not making an equal Rate for the Poor, and their Fine was set; it was moved that they might be bailed on Error brought; but the Court refused, and would not supersede the Execution. 2 *Keb. 172. Sid. 320.* Court will not bail Overseers convicted, &c.

12. The Court refused to confirm an Order of Sessions, made to charge another Parish to contribute to the Poor of *Hinkly*; because the two next Justices, who by the *Stat. 43 El. c. 2.* are made Justices within the Hundred, had not made any Order, and the Sessions cannot meddle originally, because then the Appeal is taken away; and therefore the next Justices ought at least to certify there is no Parish sufficient in the Hundred; so wherever any Statute appoints the two next Justices, none can go to the Sessions originally; *contra*, where it appoints any two Justices, the Sessions may originally determine it; & *per Cur.* the Order was quashed. 1 *Keb. 685.* An original Order made at the General Quarter-Sessions, That the Churchwardens and Overseers of the Poor of the Parish of *A.* do make an Assessment to the Church and Poor by a Pound Rate, &c. was quashed, because the Justices have not any Jurisdiction to make such original Order at the Quarter-Sessions; although it had been otherwise if it had come before them by Appeal. *Regina versus Inhabitants of Aberford-East, 2 Ld. Raym. 798.* Whenever a Statute appoints two next Justices, cannot go to the Sessions originally.

13. The Justices may quash the whole Rate where it is unequal, and may make a new one themselves, or Order the Inhabitants to make a new one. The Case of the Parish of *Shoreditch,*

Sessions may vacate whole Rates, &c.

None to be rated for a whole Quarter, or Distress taken by a general Warrant.

Hospital-Lands are rateable.

A standing Rate not good.

Assessments to be made according to the visible Estates in the Parish, &c.

ditch, Mich. 10 W. 3. B. R. Salk. 524. Upon setting aside a Poor's Rate upon an Appeal, it was objected, that the Sessions had not Power to vacate whole Rates; but only to relieve particular Persons, whom they find to be aggrieved; but adjudged that they may vacate whole Rates, and refer it to the Churchwardens to make new Rates, or they may make new Rates themselves. *Shoreditch Parish, 2 Salk. 524.*

14. P. took Part of a House in the Parish of B. on the third Day of December, and was rated and distrained for a Quarter's Rent due at Christmas following, which Distress was taken on a general Warrant made for the whole Year; adjudged that he could not be rated for a whole Quarter; because by the Statute the Poor's Rates are to be assessed Monthly; for otherwise a Man cannot remove in the Middle of a Quarter, but he will be twice rated; neither can a Distress be taken by a general Warrant made at the Time of the Rate, but there ought to be a special Warrant; neither can it be taken for a Quarter before it is ended, if the Custom is to rate quarterly. *Tracy versus Talbot, 2 Salk. 532.*

15. Adjudged that Hospital-Lands are rateable to the Poor; because no Man, by appropriating his Lands to an Hospital, can exempt them from such Rates, to which they were subject before, and by that Means lay a greater Burden on the Parish. *2 Salk. 527.* An House converted into a Conventicle, and used for no other Purpose, shall not be rated to the Poor's Tax. *Hill. 1 Geo. 2. B. R.* Where a Lessor covenants to pay all the Taxes on the Lands demised, Rates to Church and Poor are not within this Covenant: They are personal Charges. *Mod. Cases in Law and Equity 314. Theed v. Starkey.*

16. Adjudged that all Rates ought to be equal as near as may be, therefore a standing Rate cannot be good; because Lands may be improved every Year, and therefore a Rate should be altered as Circumstances alter.

17. An Order of Sessions was returned upon *Stat. 43 Eliz. c. 2.* for taxing the Parishes adjacent, &c. for Relief of a poor Parish: Exception was taken, that by the Statute this ought to have been done by the two next Justices, whereas this Order was made at Sessions; quash'd because the Statute was not pursued, and thereby an Appeal is prevented. *Comb. 25. Rex v. Grissly.* Resolved by all the Judges of England, upon a Reference to them, that the Assessments for the Poor ought to be made according to their visible Estates, Real and Personal, which they have and enjoy in the Town or Place where they inhabit, and not with any Regard to any other Estate which they have in any other Place; and also to tax the Occupiers of Land within the Town or Parish only, and not the Lessors, or Owners of the Lands. *2 Bulst. 154.*

18. Man-

18. *Mandamus* to the Justices to make a Rate for the Support of the Poor of the Parish of St. Mary, &c. which was opposed, because the Parish Officers ought to make the Rate, and the Justices only are to sign it; to which it was answered, That this Motion was grounded on that Clause in 43 *El. c. 2.* by which 'tis enacted, That where the Inhabitants of any Parish are not able to relieve themselves, two Justices may tax other Parishes, &c. thereupon a *Mandamus* was granted, directed to the Justices; and as this is a Matter of Right, they ought to make a Return. *The King ver. The Officers of St. Mary's Parish in Marlborough, Hill. 11 Geo. 1.*

Mandamus to Justices, to make a Poor's Rate.

19. The Quarter-Sessions originally made an Order, setting forth, That whereas the Parish of D. was overburdened with Poor, and the Parish of E. had no Poor, the Parish of D. should be annexed to the Parish of E. and that the Occupiers should, by Monthly Payments, contribute 22 *l. per Ann.* to D. as long as it was overburdened with Poor, and E. had none. *Holt, Ch. J.* and the Court inclined, That the Taxation of particular Persons of E. in Aid to D. or the whole Parish of E. in a Sum certain, to be levied by the Overseers, &c. would be well enough; but that so much of the Order as concerned annexing the Parishes, was void. 2 *Salk. 480, 481. Dimchurch ver. Eastchurch.*

20. An Overseer is not bound to lay out Money 'till he receives it; but if he does, he may make a new Rate for the Relief of the Poor, and out of that he may retain to pay himself: *Et per Cur.* the Churchwardens and Overseers may make a Rate themselves, but it must be for the Relief, and confirmed by the Justices, and thereupon they may levy the Money, and reimburse themselves. *Tatney's Case, Hill. 2 Ann. B. R. Salk. 531. 2 Ld. Raym. 1011, &c.* Where Parish Issues, &c. are levied upon a particular Person, the Parish ought at Common Law to make a Rate to reimburse him, but a *Mandamus* lies not. *Q. Comb. 257.*

21. **A** Rate and Assessment on the several Persons here underwritten, Inhabitants of the Parish of _____ in the County of _____ made and assessed the _____ Day of _____ by us whose Names are underwritten, the Churchwardens and Overseers of the Poor of the said Parish, by and with the Consent of two of his Majesty's Justices of the Peace for the said County (Quorum 1.) for and towards the necessary Relief of the Lame, Old, Impotent, Blind, and other the Poor of the said Parish; and for other the Purposes in the several Acts of Parliament, relating to the Poor mentioned, being the first Rate for the Relief of the Poor of the said Parish for the Year 1732, at 10 *d.* in the Pound, or being the second Rate for the further Relief

Relief of the Poor of the said Parish for the Year 1732, at 10 d. in the Pound (or as the Case is).

	l.	s.	d.
A. B. Gent.	00	10	00
C. D. Yeoman,	00	05	00
E. F. Merchant,	00	07	06
G. H. Linen-Draper,	00	06	00

J. K. Churchwarden.

S. M. }
N. O. } Overseers.

We whose Names are underwritten, being Inhabitants of the Parish of A. aforesaid, have perused the above Assessment, and do hereby declare, that the several Sums abovementioned are by our Approbation rated upon the respective Persons concerned, and that the same is an equal Rate according to the best of our Judgments.

P. Q.	}	Parishioners.
J. O.		
J. L.		
A. M. &c.		

We whose Names are hereunto subscribed, his Majesty's Justices of the Peace for the County of (Quorum 1.) do approve of, allow and confirm the aforegoing Rate made for the Poor. Given under our Hands and Seals, &c.

22. The two Justices make an Order for the Overseers of the Poor to pay 2 s. a Week to Elizabeth Reddish; but the Order did not say she is poor, impotent; and otherwise, the Statute gives them no such Power. *per Cur'*: The 43 Eliz. does not give them Power, unless they are upon the Poor's Rate.

23. A Poor's Rate is never quash'd. If the Rate is not good, it is a Nullity, and you are not bound to obey it. Two Justices made an Order to compel the present Churchwardens of Ely to pay to the two precedent ones, or their Executors, the Sum of 40 l. Quash'd; *per Cur'* they have no such Authority. To quash a Poor's Rate, the Parties aggrieved appealed to the Sessions; the Sessions made an Order to levy the Money on Account of the Rate according to the Land-Tax; it was moved to quash it, because Persons that do not pay to the Land-Tax, yet contribute to the Poor's Rate, as Persons who have a considerable Sum of Money; and it was quash'd *per Cur'*. The Sessions have no original Power to appoint Over-

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Overseers; they appoint two of the Inhabitants, not said substantial Inhabitants, as the Statute directs; and quash'd *per Cur'*. The Parish of *Honiton* the same Objection. All Things which are real, and bring in a yearly Revenue, may be rated and taxed to the Poor.

24. If the Mayor of a Corporation will not sign a Tax Mandamus made on the Palace of a Bishop, where the Prebends live, granted to the Mayor of *Chichester*. *3 Keb. 572.* Mayor of *Chichester*. And though the Justices may for reasonable Cause correct a Tax; yet they cannot refuse to sign it without reasonable Cause, though the Statute *43 Eliz. cap. 2.* saith, they shall tax; the Usage having been for Parishes to tax. *3 Keb. 594.* Justices not to refuse to sign a Poor's Rate, without a reasonable Excuse.

A Warrant of Distress for a Poor's Rate.

To the Churchwardens and Overseers of the Poor of the Parish of _____ in the County of _____ or any of them.

25. Middx. ff. **W** Hereas in and by a Rate, Tax, or Assessment made, assessed and allowed according to the Directions of the Statute in that Case made and provided, R. G. an Inhabitant and Occupier of an House in the said Parish of _____ was duly rated and assessed for and towards the necessary Relief of the Poor of the said Parish for this present Year, and hath refused and neglected to pay the Sum of 12 s. 6 d. assessed upon him as aforesaid, although the same hath been demanded of him by the Overseers of the Poor of the said Parish; and whereas it appeareth unto us, two of his Majesty's Justices of the Peace for the County of Middlesex, (Quorum 1.) upon Oath of A. B. that the said Sum of 12 s. 6 d. hath been demanded of the said R. G. in Person, or at the House of the said R. G. (as the Case is) and is still in Arrear and unpaid: These are therefore in his Majesty's Name, to will and require you, that some or one of you do forthwith levy the said Sum of 12 s. 6 d. so in Arrear from the said R. G. by Distress and Sale of his Goods, rendering to him the Overplus, if any there be; and if no such Distress can be had or taken, that then you certify the same unto us, to the End such further Proceedings may be had therein as to Law doth appertain. Given under our Hands and Seals this _____ Day of April 1732.

26. Altho' a Poor Rate be really made at the Sessions on an Appeal, yet if it do not appear by the Order itself (as by Recital of the former Order, &c.) the latter Order shall be quashed: And

And the Court refused to supply this Defect in the Order by Affidavit. *Comb.* 133, 134.

Poor Rate not
removeable by
Certiorari.

27. In *Easter Term* 2 *Geo.* 2. *The King* against *The Inhabitants of Uttoxeter*. The Court of King's Bench, after great Deliberation, resolved, that a *Certiorari* does not lie to remove a Poor's Rate; that if it be not a legal Rate, or if it be unequal, the Party aggrieved may appeal to the Sessions for his Remedy upon the Distress: And it was so determined 10 *Ann.* in the Case of *St. Mary in Marlborough*.

CHAP. LI.

Removals.

In what Cases
Poor may be
removed.

1. **T**HE Statute of 13 & 14 *Car.* 2. c. 12. enacts, That where any Person shall remove from one Parish to another, and in the Parish to which he removes shall rent a Tenement under 10 *l. per Ann.* the Churchwardens and Overseers of the Poor within 40 Days, by Warrant from two Justices, on Complaint made by such Churchwardens, &c. may remove him to the Place where he was settled for 40 Days, unless he give Security to discharge the Parish.

The 40 Days
Continuance,
how to be ac-
counted.

2. And by the Stat. 3 & 4 *Wil.* & *Ma.* cap. 11. the 40 Days Continuance is to be accounted from the Time of publishing Notice in Writing of the House of Abode and Number of the Person's Family. And this Notice is to be read in the Church by the Overseer, &c. the next Lord's Day after Divine Service, on Pain of 40 *s.* leviable by Distress or Commitment for a Month. In Orders for removing poor Persons, the Practice hath been not to mention that they do not Rent 10 *l. per Ann.* but as to another Exception, *viz.* that the Order did not set forth, that it was made upon Complaint of Churchwardens or Overseers, the Omission is fatal. Such Complaint is necessary to give the Justices a Power of Removal; for perhaps the Parish may be willing to entertain them. And a Return *ex post facto*, that the Order was made upon such Complaint, shall not supply it. This ought to have appeared upon the Face of the Order. *Combr.* 400, 534.

3. Bastard-Children gaining a Settlement by their Birth, by Construction of the Statute 18 *Eliz.* cap. 13. it has been usual with the Justices of Peace (for preventing any Charge to the Parish) if a single Woman with Child come into a Parish, by Warrant, to remove her to the Place of her last legal Settlement. But let a Man be settled where he will, he cannot, though likely to become chargeable to the Parish he goes to

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reside in, be removed from thence, if he have any Estate there. 5 *Mod. Rep.* 416. 2 *Keb.* 674. *Stanrode versus Bampton.* Where a Man marries a Feme-Freeholder, the Husband gains a Settlement. *Modern Cases in Law and Equity* 287, 288. *The King versus Parishioners of Wilby.*

4. If a Man be removed by Warrant of two Justices from one Parish to another, and the Churchwardens or Overseers refuse to receive him, they shall forfeit 5 *l.* to be levied by Distress and Sale of Goods, for the Use of the Poor of the Parish from whence such Person shall be removed; and for Want of Distress be committed for 40 Days. 3 & 4 *W. & M. c.* 11. but the Party grieved may appeal to the Quarter-Sessions of the County from whence the Party was removed.

Parish Officers forfeit 5 *l.* if refuse to receive a Person removed.

5. A Woman big with Child, being unmarried, was by an Order of two Justices removed from one Parish to another, and there she was brought to Bed; the Parish to which she was removed appealed to the next Sessions, and the Order was reversed. Afterwards an Order was obtained from two Justices to send the Child back; and that Parish appealed, but the Order was confirmed. At last it was removed into *B. R.* and Chief Justice *Holt* gave his Opinion, that the Birth at the last Parish did not settle the Child there, by Reason the Mother was there under an illegal Order, which Order being reversed, the Matter is no more than they unjustly procured the Woman to go thither. *Trin.* 3 *Ann.* *Westbury and Costham,* 1 *Salk.* 121, 122.

Mother removed by an illegal Order, not good.

6. An Order of two Justices to remove the Father and Mother, and *John, Elizabeth, and Sarah,* their Children, from the Parish of, &c. to the Parish of, &c. quashed; because it did not set forth the respective Ages of the Children, for they might be Apprentices, or serve for a Year, and so gain a Settlement elsewhere; for this Reason it was quashed as to the Children; but it was good as to the Father and Mother. *The King vers. Trinity Parish in Chester, Mich.* 11 *G.* 1.

Order of Removal must set forth Ages of Children, &c.

7. If a Woman near her Time, be, by Practice, clandestinely removed from one Parish to another, and there delivered, she and the Child are to be removed to the Parish from whence she was so clandestinely conveyed. 2 *Bulstr.* 381. *Villa de Tewksbury vers. Villam de Twining.* *Comb.* 286, 360. *Per Holt,* Chief Justice: The most regular Way for Justices to proceed upon 14 *Car.* 2. *c.* 12. in removing a poor Person, is to make a Record of the Complaint and Adjudication, and upon that to make a Warrant under their Hands and Seals to the Churchwardens, to convey the Persons to the Parish to which they ought to be sent, and deliver in the Record *per proprias manus* into Court the next Sessions, to be kept there among the Records to charge the Parish, and that Record may

The most regular Way of Justices removing a poor Person, &c.

be well removed by a general *Certiorari* to the Justices of Peace. *Hil. 4 Ann. B. R. Salk. 406.*

8. If a poor Man settled at *A.* marries a poor Woman who is settled at *B.* and has Children by a former Husband, the Wife shall be removed with him to *A.* but the Children, such of them as are above seven Years old, shall not be removed, and those under Seven shall be removed only for Nurture; so that they shall be kept at the Charge of the Parish from whence they are removed. *Mich. 10 Wil. 3. B. R. Salk. 482.*

9. Where an Order of Removal is made in the County of *L.* it shall not be reversed by another made in the County of *C.* but the Remedy is by Appeal in *L.* as seems in *Lucas's Case, Comber. 218, 219.* And the Order must call the *terminus ad quem* the Place of his last legal Settlement. *Ibid.*

10. A Woman and her two Children landed at *Harwich* from *Holland*, and removing to another Place, were sent back to *Harwich* by Order of two Justices; the landing makes no Settlement; the Order was quashed; and *Eyre* Justice seemed of Opinion that this is *Casus omisus* in the Statute. *Comb. 287.* Where a Child is brought from the Parish of *A.* to the Parish of *B.* without legal Authority, they of *B.* may by Warrant of two Justices return the Child to *A.* tho' not the Place of its last legal Settlement; because they have done the Wrong: Where the Child is first known to be, that Parish must provide for it till they find another. *Comb. 364, 372.* But the Order (as to the Parish of *A.*) must not say, there to be provided for, but they are to be left to take their Course according to Law. *Ibid.*

11. Justices may make an Order to remove several Families, and upon Appeal the Sessions may reverse it *quoad* one. A poor Man ought to have Notice, and be heard before he be removed, if it can be; but 'tis not absolutely necessary. A Servant well settled, being with a Master removable, cannot be removed with him, by Stat. 43 *El.* but the Master may complain upon the Retainer. *Comber. 478.*

CHAP. LII.

Servants.

What Persons may be warned by two Justices to go to Service, &c.

1. **T**WO Justices may warn all single Persons under the Age of 30 Years to go to Service at a Time they shall limit, and any Woman above the Age of 12 Years, and under 40, being unmarried, may, by two Justices, be compelled

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pelled to go to Service; and if they refuse so to do, and continue to live idly, having no visible Estate, or a lawful Way to maintain themselves, they may be sent to the House of Correction, or bound over to the Sessions. 5 *Eliz. c. 4.*

2. Persons having no Lands, and such who are bred to no Trade to get a Livelihood, the Churchwardens and Overseers of the Poor of the Parish have Power to set them to work; and if they refuse to work, one Justice may send them to the House of Correction, as he may likewise such Persons who refuse to work for reasonable Wages.

3. One Justice may order such as he thinks fit to work at Harvest; and if any shall refuse so to do, he may put them in the Stocks for a Day and a Night; and Artificers may be compelled to work in Hay-time and Harvest; and if they refuse, they will be liable to the same Penalties. One Justice may order proper Persons to work at Harvest.

4. Labourers may go into other Counties to work in the Time of Harvest, having a Testimonial under the Hand and Seal of one Justice.

5. And a Man may not turn away a Servant, or abate his Wages on Account of Sickness. *Dalt. 187.* And if a Servant shall refuse to do his Work, that is a Departure in Law, altho' he stay still with his Master. *Ibid.*

6. It was a Question, Whether an Indictment would lie for enticing a Servant or an Apprentice out of his Master's Service, and to carry away his Goods; for it is but a private Injury, and not in its Nature publick; and, therefore, an Action on the Case lies for enticing; but Trespas will lie for taking him out of his actual Service. And the Court, upon a Motion in Arrest of Judgment, was of Opinion, that an Indictment would not lie. *Hil. 2 Ann.* Every Justice of Peace may command vagrant Persons to Prison, if they will not serve. Indictment will not lie for enticing away a Servant, &c.

7. None of the Persons retained in Husbandry, or in any of the Trades mentioned in the Statute, shall depart from the Parish where they served, to another Parish, nor out of the Hundred or County where they last served, to serve in any other Parish, Town, &c. unless they have a Testimonial under the Seal of the Constable, and two other honest Householders of the Parish they last served in, (or if a City or Town, under the Seal of the said Town) declaring their lawful Departure; which Testimonial is to be register'd by the Parson, Vicar, &c.

8. A Master retaining a Servant in Husbandry, not having a Testimonial or Certificate from his Master living in the same County, he shall forfeit 5*l.* *Dalt. 186.*

9. If a Servant depart without a Testimonial, he shall be committed; and if he does not procure one within 20 Days, he shall be punished as a Vagabond; and so he shall be, if he

be taken with a Counterfeit Testimonial; but this is not much in Practice.

10. A Servant well settled, being with a Master removable, cannot be removed with him, by Stat. 43 *Ed.* but the Master may complain upon the Retainer. *Comb.* 478.

C H A P. LIII.

Settlements.

Settlements
are gained
three Ways.

1. **S**ettlements are gained three Ways: *First*, By Inheritance, as when a Child gains a Settlement in a Parish because his Father was there settled. *Secondly*, By Birth: And *Thirdly*, By Commorancy.

How Settlement
by Birth
may be defeated.

2. As to the first of these, if the Father has a legal Settlement, the Child is settled where the Father is; and if the Father has no legal Settlement, then the Child regularly gains a Settlement in the Parish where born. 2 *Bulst.* 351. But this Settlement by Birth, may be defeated several Ways. 1. If the Parent is remov'd by an illegal Order, and from the Order an Appeal is duly made, pending which the Child is born, and then the Order is quash'd, the Child is to be sent back with the Mother. 2. By Practice, *Comb.* 286, 360. *supra*, c. 52. §. 7. as if a Woman near her Time is clandestinely sent to another Parish, and there delivered. 3. If a Woman with Child be sent to the House of Correction, and is there delivered, the Child shall not gain a Settlement by its Birth, in the Parish where the House of Correction is, but in the Parish where the Mother dwelt when sent to the House of Correction, as the Place where she had probably been otherwise delivered. *Westbury and Costham Par. Salk.* 121. 2 *Bulst.* 258, 381. And Persons whose Interest in Houses or Lands is determined, cannot be put out of the Town where they were legally settled; nor can they be sent to the Place of their Birth, or last Habitation, but according as they are able or impotent, shall be relieved, or set to work in the Town where so settled; but if they wander and beg, then they may be taken up, and sent to the Place of their Birth. *Dalt.* 158.

3. Settlement by Commorancy is where a Person continues in some other Place than where he was before legally settled, and such Continuation makes a Settlement. Formerly, every one who was settled as a Native, Householder, Apprentice, or Servant for a Month, without a just Complaint made to remove them, were held to be lawfully settled. But now this Month has been altered to 40 Days, where a Person shall
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come into a Parish, and rent a Tenement under 10*l. per Ann.* and several other Alterations are made by the Statute 3 & 4 W. & M. c. 11. By which Statute the renting 10*l.* a Year, or a Man's executing on his own Account any publick annual Office or Charge for one Year, or his paying any Share of Taxes, Rates or Assessments of the Parish, (but Scavengers Rates, and to the Highways, are since excepted by Stat. 9 G. 1. c. 7.) or a Person's serving an Apprenticeship, and inhabiting in a Town, or an unmarried Person not having a Child, being hired for a Year, and continuing in the Service for a Year; any of these will make a legal Settlement. By Holt, Chief Justice, having Land in a Parish will not make a Settlement, but living in a Parish where one has Land, will gain a Settlement without Notice. Between the Parishes of *Ryssel* and *Harrold*, 2 Salk. 524. By 9 Geo. 1. c. 7. no Person shall be adjudged to gain a Settlement in a Parish by Virtue of any Purchase therein, for which, the Consideration doth not amount *bona fide* to 30*l.* for any longer Time than such Person shall inhabit in the Estate purchased, and shall then be liable to be removed to the Place where he was last legally settled. The renting a Water-Mill of 10*l. per Ann.* gains a Settlement as above. *Evelin & Rentcomb Par.* Salk. 536. But no Settlement can be legal in any Parish when the Residence of the Party is obscure and uncertain, as coming now and then, and lying in Barns, Outhouses, &c. and no Settlement can be where the Party is under Disturbance from the Parish Officers. 3 & 4 W. & M. c. 11. Rating a poor Occupier of a House for his Landlord to the King's Taxes, is a Rating him within the Explanatory Act to make a Settlement. *Comb.* 282.

4. The Law unfetters none who are lawfully settled, nor permits it to be done by Compulsion or Practice. If one be retained in Service only, or had but an hired House, the Law does not unfetter such Person. If any shall by indirect Means hinder a poor Man from hiring a House, he may for such Disturbance be indicted. And it is fineable to remove or put any out of the Parish who ought not to be put out, and the Persons so removed may be sent back. *Dalt.* 98. If a Man born in *A.* be settled in *B.* and he is there thrust and kept out of his House, so that he is forced to wander and beg in *D.* and thence he is sent to *A.* he is to be settled in *B.* for this was by Compulsion. And if a Parish will have a Man born in *A.* but settled with them, to go and wander, and beg in *B.* that he may be sent to *A.* and he doth so, this being by Practice, he may be sent back to the Parish from whence he came.

5. Regularly a Wife is to be sent to, and settled with the Husband, though he be but an Inmate or Servant, and generally all Children are to be sent to, and settled with the Parents,

What makes a Settlement by 3 & 4 W. & M. c. 11.

A Man is settled where he hath an Estate, &c.

The Law unfetters none who are lawfully settled, &c.

Person removed by Practice, must be sent back.

A Wife regularly is settled with her Husband, &c.

rents; but if a Man hires a House in *A.* and being there with his Wife and Children, he shall afterwards bind himself a Servant to one in *B.* in this Case, his Wife and Children are not to be sent to *B.* but are to remain still at *A.* where they were once settled; but it is otherwise, if the Husband had hired an House in *B.* *Dalt.* 166. If the Husband hath an House in *A.* and live there by Night, but is under Covenant to serve a Master in *B.* and he is there all the Day, yet the Wife is to continue in *A.* but if he take a House in *B.* the must be settled with him.

*Till eight Years of Age, Children are counted Nurse-Children.

6. *Till eight Years of Age, Children are counted Nurse-Children, yet afterwards they must have Maintenance from the Parishes where they themselves were settled. And if an Order is made on the Parish where the Parents were settled, it must appear upon the Face thereof, that the Child had gained no new Settlement. *St. Giles & Hackney, Salk.* 407. A Man marries a poor Woman who is settled in *B.* and had Children by a former Husband, and he is settled in *A.* his Wife shall be removed to him to *A.* but such of her Children as are more than seven Years of Age shall not be removed; those under seven Years of Age may be, for Cause of Nurture; but ought to be maintained at the Charge of the Parish of *B.* by *Holt*, Chief Justice. *Rex v. Lubab. de Wangford in Suffolk,* 1 *Ld. Raym.* 395.

Cases of Settlements.

7. An Order for the Removal of a poor Person was quash'd because there was no Judgment of the Justices concerning the last legal Settlement, but only the Oath of a Woman. *Salk.* 485. A general Order to remove a Man and his Family is not good. *Salk.* 482. 1 *Ld. Raym.* 395. A Smith exercised his Trade a Year in *T.* and was employed by most of the Inhabitants, and by the Lord of the Manor, and Justices of the Peace; and was removed thither by two Justices. This Order was reversed at the Sessions: Both Orders were returned in *B. R.* reciting the Special Matter, that he was an Apprentice in *D.* and had not given any Notice in Writing, nor was assessed, nor bore any publick Office in *T.* The Order of Sessions was confirmed. *Comb.* 410.

8. An unmarried Person hired for a Year, marry'd before the Year was expired, it was held, that he could not be removed, and that upon performing his Service, at the End of the Year, he would gain a Settlement. *Farrington & Witty Par. Salk.* 527.

9. Justices at the Sessions are the proper Judges, whether 'tis fit to oblige any Person to take an Apprentice or not; but a Covenant between the Master and a third Person, the Servant not being a Party, makes no Apprenticeship; such Person has been adjudged no more than a Boarder for his Education,

cation, which is no Service to make a Settlement. *Case of Chelsterfield, Salk. 479, 491.*

10. If the Dispute of Settlement of a poor Child be between two Parishes, the Court of *B. R.* usually refers it to the Judges of Assize; but if between two Counties, this Court will determine it. *3 Keb. 644.*

11. The Place which the Poor were last legally settled at, is the Place which by Law is to provide for them. *Cases of Settlements. 5 Ann. B. R.*

12. If the Parents of poor Children die *in Transitu*, the Children are to be provided for by the Parish where they were born; for the Place of Birth is a certain Settlement, and Parents wandering with them afterwards, will not alter the Case. *Bulst. Rep. 351.* All Children are to be sent to, and settled with the Parents, and Children above seven Years of Age found begging and vagrant with the Parents, are to be sent to *Bridewell* with them; if under, to the Place where they last passed through without Correction. A Man having a Wife and Children, takes a House in the Parish of *B.* for a Year, and in that Year is wrongfully turned out of Possession; whereupon he takes an House in another Parish, and is there turned out, and then gets into a Barn in another Parish, and there his Wife is delivered of another Child; in this Case they are all to be sent to the Parish of *B.* out of which they were first illegally forced.

13. Disbanded Soldiers may settle in any Town of the County where born, and set up any Trade without serving an Apprenticeship, &c. by *10 & 11 W. 3. c. 11.*

14. If a travelling Woman having a small Child sucking on her, is apprehended for Felony, and is tried, and condemned, and executed, this Child is to be sent to the Place of its Birth, if that can be known; if not, to the Place where the Mother was taken; for the Child being no Malefactor, ought not to be sent to Gaol. *2 Bulst. 351. 3 Car. 1. per Hide, Ch. Just. at Cambridge Assizes. Dalt. 958.* A Woman and her two Children landed from *Holland* at *Harwich*, and removed to another Place, but were sent back to *Harwich* by Order of two Justices. This Order was quashed; for it seems to be *Casus omissus*. *Comb. 287.*

15. An Apprentice, though bound to one in one Parish, and by his Master assigned to one in another, if the Indenture is not cancelled, is settled in the Parish where the first Master lived. *3 Ann.* the Case of the Parish of *Thursley* in *Surry*, but then it must be by Indenture.

16. If the Order of the two Justices is on the Merits affirmed or quashed, it is conclusive betwixt the Parties. *Pesch. 1 Ann. inter Parochias de Bishop Walt. & Fer in Com. Effex.* If the Places concerned do not appeal from the Order of the

two Justices, it is conclusive to all Places, unless an after Settlement can be found. *Mich. 5 Ann.* The Case of *Great Sanke, Barton and Clifton* Parishes. No Appeal lies from the Sessions to the Judge of Assize. *2 Bulst. 355.* Being rated to Parish Duties, but not paying them, this will not make a Settlement; for the Statute says, shall execute any Office or Charge, or pay his Share.

17. Inhabitaney and Publication of Notice, if no Disturbance be for 40 Days after the Publication, will make a Settlement, by Stat. 3 & 4 W. & M. cap. 11. *J. S.* came from the Parish of *K.* with a Certificate being legally settled there, and went to the Parish of *M.* and because he was likely to be chargeable, they sent him back again to *K.* by an Order; but it was quashed, because by Stat. 8 & 9 W. 3. c. 30. he is not removeable who comes with a Certificate, unless he is actually chargeable, and the Sessions have no Jurisdiction but by Way of Appeal, upon such an Order. *2 Salk. 436.* A Man rents a House of 10 *l.* a Year, the House lies in two Parishes, he is a Parishioner where his Bed is, and where he lodges; but where a Man has a Shop in one Parish, and lodges in another, he is a Parishioner where he drives his Trade; paying to the County Bridge gains no Settlement. *Trin. 1710.*

How a Covenant Servant gains a Settlement.

18. A Servant must be hired for a Year, and serve that Year to gain a Settlement; the original Contract must be for a Year; and yet, if a Man hires a Servant, and bargains with him that he shall come within a Day of *Michaelmas*, and then says he agreed not for a Year, yet this Contract shall be taken for a Year; for it is apparent Fraud to evade the Statute. *Mich. 1710.* The Parish of *Rudwick* and *Cheddinsford.* *A.* was hired as a Servant to live at *R.* for Half a Year, and after that, was hired again to live there for another Half Year with the same Master; and thereupon served a Year in one continued Service, though by several Contracts. This was adjudged not to gain a Settlement; for it ought to be one intire Contract, and one intire Service. *2 Salk. 535.* Parishes of *Dunsfold* and *Ridgwick.* But the following Cases seem contrary. *T. Edmonds* was hired to *Wrightson* at *Aynhoe*, and served him the same Year, and received his Year's Wages; and afterwards at *Michaelmas* 1725. went to *Potter* at *Priffiter* to be hired, who told him, he would not hire him then, for that he expected a Man-Servant in three Weeks, but if he, *Edmonds*, would supply the Place in the Interim, he *Potter* would pay him for his Time; whereupon *Edmonds* entered into *Potter's* Service, and lived there till near *Christmas* following, and then hired to him and served him at *Priffiter* till *Michaelmas* following; then at *Michaelmas* 1726. he was hired at *Priffiter* for a Year to *Potter*, and served only to *Midsummer* following

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following. Two Justices by their Order had sent him to *Aynhoe*, which Order upon Appeal was confirmed at Sessions; but both were quashed in *B. R. Mich. 1 Geo. 2.* And the Court held, that these Hirings and Service did make a Settlement; for he was hired for a Year, and served a Year. *2 Ld. Raym. 1511, 1512, Rex v. Inhab. Aynhoe*; and this was upon the Authority of the Case of *Brightwell* and *Westbanning* there cited, resolved and settled *Hil. 1 Geo. 1.* when the Earl of *Macclesfield* was Chief Justice. *Rudwick* and *Dunsfold* was cited on the other Side.

19. A Person rents two Tenements of *5 l. per Ann.* each, he thereby gains a Settlement. For the Design of the Act was to value the Competency of the Person, by the Quantity of Land he is able to stock. Therefore it is not material if they were ten Tenements before.

20. A Man has a Child married, and settled elsewhere, he hires himself for a Year, and serves the Year, and held the Man, notwithstanding he had a Child, gained a Settlement by Virtue of his Service; he is a single Person within the Meaning of the Act, though not expressly within the Letter of it. The Parish of *Anthony* and *Cardigan*, *Hil. 1710.*

Cases of Settlement.

21. Two Justices have Power to inquire into the Boundaries of a Parish concerning Settlements. *Hil. 1712.*

22. A Servant is hired at *A.* for a Year, his Master lives there Half a Year, then lives at *B.* another Half Year; held, the Servant is settled in the last Place; for the Identity of the Service is the same, and the Statute does not tie it down to one Place; if the Master had removed to several Places, the last Place where he lives 40 Days gains him a Settlement, agreeable to the Stat. of 13 & 14 Car. 2. c. 12.

23. A Woman marries a *Scotchman* who had gained no Settlement in *England*, the Settlement which she had in her own Right does still continue, notwithstanding the Intermarriage; for though a Woman follows the Condition of her Husband, she shall not be put by Marriage into such Condition, that, if her Husband is a Parishioner no where in *England*, she must starve. *Mich. 1713.* The Parish of *Dunsfold* and *Winsborough Green.*

24. A Person is a Lodger, yet his Servant gains a Settlement.

25. In *Hil. 1713.* in the Case of *Stokelane* and *Dalpin*, it was doubted whether the Statute of 13 & 14 Car. 2. shall be taken generally, or only to those particular Places mentioned in the Statute; and held, it extends to all generally, or else all *Wales* would be excluded. A poor Person hires himself for a Year, and before the Year expires, he marries; a Servant is not restrained from marrying; and *per Curiam* it gained

gained a Settlement. *Pasch. 1712.* Parish of *Ordenham* and *Henden* in *Mid.*

26. *J. S.* being chose a Parish Clerk by the Parson, served for several Years, and received his Fees and Duties. *Per Cur'*: 'Tis a Parish Office, and has the Care and Custody of the Ornaments of the Church. 1 *Lev. 80.* 'Tis true, if he is poor, and has a Family, they may remove him; but if they let him continue a Year, none can remove him; for although he came in by the Parson only, yet the Parish paying him, 'tis a Consent and Approbation; and by this Consent of theirs, the Law adjudges him in by the Concurrence of the Parish. *Mich. 1711.* Parish of *Gayton* and *Milwich* in *Staffordshire.*

By *Holt*, Chief Justice: If a poor Man has been relieved several Years in a Parish, I should presume Notice in Writing, but it is but Evidence to the Justices. A Servant, or one that rents 10 *l. per Ann.* need not give Notice; for they cannot be disturbed. In this Case the Justices of Peace had, by their Order, determined it to be a clandestine Habitation, therefore the King's Bench took it to be so, though the Party had lived six Years in the Parish. *Comb. 382.*

27. An hired Servant marries within the Year, and continues the Year, held a good Service within the Statute; *per Cur'*, marrying within the Year, a good Cause to turn him away; but if he continues, he gains a Settlement. Parish of *St. Saviour* and *St. Dionis Backchurch.* A poor Man is hired to one *Knight* who rented a Farm, and lived Half a Year; the Master assigns the Farm over to another; the Servant lives the Residue of the Year with the other Person in the Farm, and at the End of the Year receives the Wages of the second Master; this shall be deemed the same Service; here is no new Contract, so 'tis a Service to the first Master, and gains a Settlement, *tota Curia accordante.* Parish of *Ivinghoe* and *Solebury* in *Bucks.* *J. S.* was bound Apprentice to *A. B.* of *St. Bride's*, who was a Lodger, and had no Settlement there; *per Cur.* the Apprentice is well settled there, notwithstanding the Master is not, nor does his Settlement depend upon his Master, as that of Wife on her Husband; but he gains a Settlement for himself within 13 & 14 *Car. 2. cap. 12.* by 40 Days Inhabitation. 2 *Salk. 533.* Between the Parishes of *St. Bride* and *St. Saviour.*

28. *A. H.* comes with a Certificate into the Parish of *E.* and afterwards marries one *S. S.* and had several Children by her; her Father surrenders a Copyhold Estate to her of 20 *s. per Ann.* and so the Husband had it in her Right; *per Cur.* the Man has gained a Settlement in *E.* for a Man cannot be turned out of his own, let it be never so small. *Pasch. 1719.* Parish of *Burcliar* and *Eastwoodhay.*

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Cases of Settlements.

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29. A Son-in-law is obliged by an Order to maintain his Wife's Mother, having an Estate with her at the Inter-marriage; *per Cur.* he is not within the Words of the Statute, nor within the the Meaning of it. *Vid. 2 Bulst.* at the End. Cases of Settlements.

30. A Servant is hired for a Year, and three or four Days before his Service expired, he desired Leave of his Master to go to a Fair to get another Service, who refused him; the Servant went notwithstanding. This is a Settlement; for the Request being reasonable, the Service, in Point of Law, continues. *Pasch. 1721. The King and The Inhabitants of Ilip.*

31. A Person rents a Mill of 10 *l. per Annum*, who assigns the Lease over to the Person who is now removed, during his Will, as long as he paid him his Rent; he continued two Years, and punctually paid the Rent, and the whole Court were of Opinion it was a Settlement. If a Person rents a Tenement of 10 *l. per Ann.* and continues 40 Days, he gains a Settlement within the Meaning of 13 & 14 *Car. 2. c. 12.*

32. A Certificate Person rents 14 *l. per Ann.* but it lies in two Parishes: *Cur.* it gains a Settlement in the Parish where he resides. Parish of *St. John in Harford and Amptbill.*

33. A Master takes an Apprentice, the Master runs away, the Apprentice hires himself for a Year, and serves the Year; *per Cur.* he gains no Settlement, not being *sui Juris*, nor of a Capacity to hire himself; otherwise, had it been by Consent of his Master, or had his Indenture been cancelled.

34. Coming into a Parish publickly, and taking a House, and being rated to the Poor, and so observed by the Officers of the Parish, is sufficient Notice, though no Notice in Writing was given to the Churchwardens. *Pasch. 1 W. & M. B. R. Shower 12 Queen ver. Paine, Comber. 107.* but see above, *Sett. 16.*

35. A poor Person is bound to a Master at B. his Master assigns him over to one at C. he gains a Settlement at C. for the Assignment amounted to a Contract between the two Masters. One cannot be bound Apprentice without a Deed, nor discharged without a Deed. 1 *Salk. 68. Paroch. Castor & Aicles, Mich. 13 W. 3. B. R.* Cases of Settlements.

Where a Person is bound Apprentice by Indenture, where-ever this Apprentice continues forty Days in the Service of his Master or Mistress, there a Settlement. When an Apprentice gains a Settlement.

such Apprentice gains a Settlement; and where any Person serves the last forty Days of his Apprenticeship, that is the Place of his last legal Settlement; and so it is likewise of an hired Servant. *Hil. 4 Ann. B. R. J. S.* was a Servant to Sir P. J. in *Walbam*; afterwards he left his Service, and was put by his Master to a Barber in *Chesterfield*, to learn to shave and make Perukes, for which Sir P. J. was to pay the Barber 5 *l.* J. S. continued a Year with the Barber, no Contract being

ing between them; this is no Settlement, because no Service: *J. S.* was only a Boarder in *Chesterfield* for Education, which makes no Settlement. 2 *Salk.* 479. Case of *Chesterfield*. The same Case, by the Name of *Caister* and *Ectles*, 1 *Ld. Raym.* 683.

36. Note; the forty Days Continuance gives a Settlement in all Cases where the Person cannot be removed by the Justices, as in Cases of renting 10 *l.* a Year, or living in his own Estate, except where the Purchase is under the Value of thirty Pounds. One *Facey* was settled at *H.* and afterwards went into the Parish of *M.* where he rented an House at 7 *l. per Annum*, and there he lived a Year, and paid the Rates and Taxes due for that House, which were not charged on his Person, but on the House; adjudged that this Payment of the Parish Taxes made a Settlement; and it was held, that paying Taxes as Occupier of a Tenement, and naming him Farmer thereof, is a sufficient Designation of the Person. *Pasch.* 1721. One, who hired a House of 3 *l. per Annum* in a Corporation, was made a Freeman, and voted as such at the Election of Bailiffs there, was held to be no Inhabitant notwithstanding; for at this Day nothing shall create a Settlement that does not come within the Words of the Statute of 3 & 4 *W. & M. c.* 11. *Rex v. Inhab. de Buckingham, Pasch.* 5 *Ann. B. R. Salk.* 534.

Cases of Settlements.

37. 'Tis the Service not the Hiring which makes the Settlement; for if a Man hath Land in two Parishes, and keeps House, and lives in one Parish, and hath a Stock of Cattle in another Parish, and Servants there to look after them, they shall be settled in the Parish where they serve, and not in the Parish where they were hired, and where their Master lives. *Rex ver. Disney, Mich.* 8 *G.* 1.

38. Children gain a Settlement by Birth in no Case but where the Settlement of their Father or Mother is not known, (except only in Cases of Bastardy) and there it gains a Settlement *prima facie*, till the legal Settlement is known, and no longer; and the Reason is, because the Children should not be Vagrants. *Trin.* 9 *G.* 1. *St. Giles's Parish in Reading ver. Parish of Eversley.* The like Resolution between the Parishes of *Whitechapel* and *Stepney, Pasch.* 1 *W. & M. Caribew* 433, 434. A Man having a Settlement at *A.* removes to *B.* and marries, and has Children born there, he lives there to his Death, but without gaining a new Settlement at *B.* these Children, though born at *B.* have not a Settlement there, but at *A.* which was the Parish of their Father's legal Settlement. If the Father had no Settlement, or if his Settlement were unknown, then the Children should be settled at the Parish where born, until their Father's legal Settlement can be discovered; supposing that they have gained no Settlement of their own. *Inhab. Par. St. Giles in Reading ver. Inhab. Par.*

Eversley

Eversley 1332.

39. The fields for five Lodging confirmed but both lived in the parish of *St.* him in the judgment that for that *Spittlefield* Years to Morning Parish of two Justices to the Settlement being removed, served, and in another where he so the Case The Case Apprentice afterward his Master for a voluntary Indenture fions; arising subsists the Incorporated after the Incorporated parish of 40. Settled and the Father's Parish his Voluntary Settlement disputed that as N the Husband

Everfley Blackwater, Hil. 10 Geo. 1. 2 Lord Raymond 1332.

39. The Husband work'd at a Silk-Throwster's in *Spittlefields* for five Years, but never lay where he work'd, but at a Lodging elsewhere; after his Death by Order of two Justices confirm'd at Sessions, his Widow was remov'd to *Spittlefields*; but both these Orders were quash'd in *B. R.* and it was resolv'd in the Case of a Cobler who work'd in a Stall in the Parish of *St. Giles*, and had an Apprentice who worked with him in that Stall, and both lay in another Parish; it was adjudg'd that the working in the Stall did not gain a Settlement, for that was in the Parish where he lay. *Rex ver. Hamlet of Spittlefields, Mich. 11 G. 1.* A poor Man was hired for five Years to work at a Glass-house at *Ratcliff*, from Six in the Morning till Eight at Night, but lodged every Night in the Parish of *Whitechapel*: This Man was removed by Order of two Justices from *Whitechapel* to *Ratcliff*, and upon Appeal to the Sessions the Order was quashed. Now both these Orders being removed by *Certiorari*, the Court held that where a Man served, and had Board-wages, and lay out of his Master's House in another Parish, he certainly gains a Settlement in the Parish where he lived and served, and not in the Parish where he lay; so the Order of the two Justices was affirmed. *Pasch. 11 G. 1.* The Case of the Parish of *Whitechapel*. Where one was bound Apprentice by Indenture, and his Master within two Years afterwards broke, and the Apprentice by and with the Leave of his Master was hired in another Parish for a Year, and served for a whole Year there, he is settled in the first Parish; for the Indenture cannot be discharged but by Deed, or by the Sessions; and the Hiring after he is bound, or any Consequences arising upon such Hiring, are intirely void while the Indenture subsists; for when an Apprentice serves forty Days by virtue of the Indenture, he cannot gain another Settlement, tho' his Master consents, because he had a Settlement by the Service under the Indenture. *Pasch. 10 G. 1. Parish of Buckingham v. Parish of Lewington, 2 Ld Raym. 1352.*

How an Apprentice gains his Settlement

40. Where a Father has no Settlement, there Birth gives a Settlement to Children; but where the Father hath a Settlement, and that is known, they shall be sent to the last Settlement of the Father. *Mich. 5 Ann.* A poor Man lawfully settled in a Parish had several Children born there, and afterwards he and his Wife and Children went into another Parish, and gained a Settlement there; and being likely to be chargeable, it was disputed where the Children should be provided for; and held, that the Children must be settled in the second Parish, and not as Nurse Children, but as Part of his Family. It is true, if the Father had been dead, and the Mother had married a second Husband settled in a third Parish, in such Case her Children by

The last Settlement takes Place.

her

Not alter'd by the Mother's marrying a second Husband.

Where Place of Settlement is not known, the Child must be sent where born.

her first Husband must go with her as Nurse-Children, and not as Part of her Family; for this accidental Settlement of their Mother by marrying a second Husband, shall not gain a Settlement of her Children by her first Husband. *Cumner and Mil-*

ton Pariss, 2 Salk. 528, 529. 3 Salk. 259. An Order of two Justices to remove a Child from the Parish of *Rickerfworth* to the Parish of *St. Giles*, as being the Place of his Birth, the Place of his Father's last legal Settlement being unknown, was held good; for where the Place of the Father's last legal Settlement of a legitimate Child is not known, there the Child may be sent to the Place of its Birth as well as an illegitimate one: And poor Children ought to be kept and provided for by the Parish where they were born, and not where the Parents die *in transitu*; for the Place of their Birth (where the Place of their last Habitation cannot be known) is in Judgment of Law the Place of settling. 2 *Bulstr.* 351, 352, 357. The Sessions may not, as it seems, send the Child to the Grandfather or Grandmother, to be kept, but it may set a Rate only. 2 *Bulst.* 245, 246, 247.

41. By 3 & 4 W. & M. c. 11. No Soldier, Seaman, Shipwright, or other Artificer or Workman employed in his Majesty's Service, shall have any Settlement in any Parish, Port, &c. by Delivery and Publication of a Notice in Writing as aforesaid, unless he be dismissed out of his Majesty's Service.

42. The Statutes relating to Settlements are 13 & 14 Car. 2. c. 12. 3 & 4 W. & M. c. 11. 8 & 9 W. 3. c. 30. 12 Ann. c. 18.

43. They who are sent from one Parish to another, must be offered to the Churchwardens and Overseers of the Poor of the Place, &c. and not to any other Person. A Man is Warden for the Borough of *Reading*, and lives in a Parish within the Borough; and adjudged *per Curiam*, it gained a Settlement. A Scavenger or Constable gains a Settlement in that Parish where he lives, although his Office is not parochial, but a precinct Office, and extends to more Parishes. Paying to a Scavenger's Rate gains no Settlement, for it must be a parochial Rate. But *Note*; it does in *London*, so likewise paying to the Land-Tax gains a Settlement in *London*. The Parish of *St. Lawrence* and *St. Mary* in *Reading*, *Hill.* 1710-11. But see the late Act of G. 1. A Man rents a Piece of Land of 10 *l.* *per Annum*, but no House belonging to it, it gains no Settlement. Parish of *Sedgemore* and *Dulleton*, *Hill.* 1710-11. Renting 10 *l.* *per Annum*, and forty Days Residence, gain a Settlement, *quod non fuit negatum per Curiam*. Adjudged *per Curiam*, that serving the Office of Collector of Births and Burials gained a legal Settlement.

N. B. It is a Rule, that all Settlements are expounded favourably, liberally, and most beneficially for poor People.

44. *John*

Paying to a Scavenger's Rate gains no Settlement.

Settlements to be expounded most favourably to the Poor.

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44. *John Stiles* possessed of a Lease for Years, dies intestate; *Query*, whether the next Kin shall be said in Law to be settled there. Held not; he has only a Right which he must pursue by taking out Letters of Administration; but no Right is settled or vested in him till an actual taking out.

45. A poor Man is hired on *Saturday, Michaelmas Day* being *Thursday* before, to serve him from the said *Thursday* to *Michaelmas* following. *Prat*, C. J. J. *Powis*, and J. *Fortescue* all held it did not make a Settlement; for there must be a Hiring first, and a Service pursuing that Hiring. The Order was quashed, it being no Settlement. A Master cannot turn off his Servant two or three Days before the Year expires; if he does, the Service in Point of Law continues, and he gains a Settlement notwithstanding; and so adjudg'd.

Where a Servant though discharged, gains a Settlement.

46. *Parker*, C. J. Renting a Tenement of 10*l. per Annum* for a Month, is a fraudulent Renting; but if a Person rents a Tenement of 10*l. per Annum*, and continues 40 Days, he gains a Settlement within the Meaning of 13 & 15 of King *Charles II. c. 12.*

47. An Infant (not known where his Friends were settled) settled where he was born. *Vid. Raym.* 476. The Settlement of the Father is a Settlement of his Wife and Family. Judge *Fortescue*: Birth gains no Settlement, but where the Settlement of the Father is unknown.

Settlement of the Father, is a Settlement of his Wife and Family.

48. *A.* is bound Apprentice to *B.* who lives in *St. Olaves*, afterwards the Apprentice, by his Master's Consent, lives with another Person in *Albhallows*: *Per Curiam* he gains a Settlement in the first Place; for a Person may serve his Master in another Place or Parish, and altho' he serve another Man, yet 'tis by Consent of his Master, and the Benefit accrues to his Master. Parish of *St. Olave's Southwark* and *Albhallows*. An Apprentice gains no Settlement by Virtue of the Apprenticeship with his Master, unless he lodges in the Parish with his Master for the Space of forty Days. *Trin.* 1728. *B. R.* the like Resolution was between the King and the Inhabitants of *Cirencester*.

An Apprentice must lodge in the Parish forty Days, to gain a Settlement.

49. A Warrant for removing a poor Man directed to the Constables, &c. without naming the Churchwardens or Overseers, is good, if executed by the Constables; tho' in Strictness they are not bound to obey it. Case of *Wangford* and *Brandon* Parishes in *Suffolk*, *Cartberr* 449. By this Case it would seem, that the Justices of Peace may impower a special Officer to execute their Warrant. An Order to remove three Persons and their Families is ill, because it is too general; for, it may be, that some of their Families are not removeable. *Rex v. Inhab. de Wangford in Suffolk*, 1 *Ld. Raym.* 395.

An Order of two Justices for the Removal of a Person from one Parish to another.

To the Churchwardens and Overseers of the Poor of the Parish of T. in the said County, and to the Churchwardens and Overseers of the Poor of the Parish of L. in the County of Surry, and to each of them.

50. Middlesex, **U**PON the Complaint of the Churchwardens and Overseers of the Poor of the Parish of F. unto us whose Names are subscribed, two of his Majesty's Justices of the Peace for the County of, &c. and one of us of the Quorum, that A. R. came lately to dwell in the said Parish of F. not having gained a legal Settlement there according to the Laws in that Case made and provided, nor produced a Certificate to them, owning him to be settled elsewhere, and that the said A. R. is likely to be chargeable to the said Parish of F. We the said Justices, upon Examination of the Premises taken before us upon Oath, do adjudge the same to be true; and we do likewise adjudge, that the last Place of the lawful Settlement of him the said A. R. was in the Parish of L. &c. We do therefore require you to convey the said A. R. from and out of your said Parish of F. to the said Parish of L. and we do also hereby require you the said Churchwardens and Overseers of the Poor of the said Parish of L. to receive and provide for him as an Inhabitant of your Parish. Given under our Hands and Seals, &c.

Churchwardens, &c. refusing to receive poor Persons may be bound over.

51. Churchwardens and Overseers refusing to receive Persons thus removed, and to provide for them, may be bound over to the Sessions, and indicted for a Contempt. 13 & 14 Car. 2. cap. 12. and forfeit 5*l.* by 3 & 4 W. & M. cap. 11.

A Certificate of a Settlement.

52. Middlesex, **W**E A. B. C. D. E. F. Churchwardens to wit, and Overseers of the Poor of the Parish of R. in the County of Middlesex aforesaid, do hereby own and acknowledge T. C. of L. to be an Inhabitant, legally settled in the Parish of Z. aforesaid. In Witness whereof, we have hereunto set our Hands and Seals this Day of

1733.

Attested by
T. M.
T. R.

A. B.
C. D.
E. F.

To

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To the Churchwarden and Overseers of the Poor of the Parish of *W.* in the County of *Berks*, or to any, or either of them.

We whose Names are hereunto subscribed, two of his Majesty's Justices of the Peace for the County of Middlesex aforesaid, do allow of the above-written Certificate. And we do also certify, that T. M. one of the Witnesses, who attested the Execution of the said Certificate, hath made Oath before us, that he did see the Churchwarden and Overseers, whose Names and Seals are to the said Certificate subscribed and set, severally sign and seal the said Certificate; and that the Names of the said T. M. and K. T. whose Names are above subscribed as Witnesses to the Execution of the said Certificate, are of their own proper Hand-writing. Dated the Day of 1733.

53. Order to remove a poor Man from *B.* to *C.* which was done, and then got an Order to remove him from thence to *F.* a third Parish; and these Orders being returned by *Certiorari*, it was adjudged that *C.* should have got the original Order repealed; for otherwise, the sending him by an Order to *F.* was a falsifying the original Order, which cannot be done but by an Appeal; for the Order of two Justices is a Determination of the Right till 'tis repealed; therefore the Parish of *C.* should have appealed and got the original Order discharged, and then the poor Man must be returned to *B.* from whence he was at first removed, and that Parish must send him to *F.* the third Parish. *Chalbury and Chipping Farringdon Parish, 2 Salk. 488.*

Order of two Justices is a Determination of the Right till it is repealed on Appeal.

54. Order by two Justices to remove a poor Man to *S.* which Order was confirmed upon an Appeal; then *S.* sends him by another Order to the Parish of *Swanscomb*; but this last Order being removed by a *Certiorari*, was quashed; because the first Order being confirmed upon an Appeal, is conclusive and binding against all other Parishes, and none can say that *S.* was not the last Place of his lawful Settlement. 'Tis true, if the first Order had been discharged upon the Appeal, or if there had been no Appeal, then the Matter is at large as to all Parishes, but only as to the contending Parishes (*i. e.*) other than to the Parish to which the poor Man was sent, for he shall never be sent thither again; because by the Reversal of the Order the Sessions did determine that was not the last Place of his Settlement; so that an Order reversed upon an Appeal is final only as to the contending Parishes; but an Order confirmed upon an Appeal is conclusive to all Parishes. *St. Michael Bedenham and Kingston Boursley, 2 Salk. 486, Swanscomb and Shensfield Parish 492. Rex v. Inhab. Ryssip, &c. 1 Ld. Raym. 394, 425. Vide Chap. XLV. §. 20.*

First Order confirmed on Appeal is conclusive.

Order for removing Poor ought to be directed to the Officers of both Parishes.

After the first Sessions when the original Order was made, the Sessions have no further Authority.

Order to remove a Man with his Wife and Children, too general.

Justices cannot order Houses for the Poor.

55. Adjudged, That if the first Order is ill, no subsequent Order upon an Appeal can make it good, and for that Reason in this Case both Orders were quashed. 2 Salk. 482.

56. An Order directed to the Churchwardens of a Parish to which a poor Man is to be removed, is ill; for the Justices cannot command him to remove himself to them; but the Order should be directed to the Churchwardens of the Parish from which he is to be removed, and also to the Parish Officers to whom removed. 3 Salk. 256.

57. If upon an Appeal the first Order of Settlement is quashed, and the Person ordered to be sent to the Parish from whence he was removed, this is ill; because the Sessions have Power only to quash or confirm the original Order; but because an Order may be good in Part, and void in Part, therefore this Order was quashed for that Part, by which the poor Person was to be removed, and was confirmed as to the other Part.

58. An Order of Removal was confirmed upon an Appeal, and the next Sessions after there was an Order of Review made, and the Sessions Order was quashed, because obtained by Surprise; but adjudged that the Order of Review should be quashed; because, after the first Sessions, when the original Order was made, the Sessions have no farther Authority. *Inhab. Cockfield and Boxstead*, 2 Salk. 477.

59. Order made to remove two Men and their Families from *W.* to *R.* quashed; because too general, for some of their Families might not be removeable by Law: As for Instance; a Man settled in *B.* marries a poor Woman settled in *W.* who had Children by a former Husband; the Wife must be settled with the second Husband, but the Children of the first Husband above seven Years old are not removeable: It is true, those under that Age must go with their Mother, but still it is but as Nurse-Children, for they must be kept at the Charge of the Parish where their Mother was settled before her second Marriage. *Johnson's Case*, 2 Salk. 485.

60. Order to remove a poor Man, with his Wife and Children, from *W.* to *S.* quashed; because Wife and Children was too general and uncertain, for some of the Children might not be removeable; besides, this Order was, Whereas it appears upon Examination before us, or one of us, which is ill; because the Examination ought to be before two Justices. *Inhab. Ware and Stanstead Mountfitchet*, 2 Salk. 488.

61. If a Woman Servant be with Child during the Time of her Service, a Justice upon Complaint of the Master may discharge her, and the Parish where she serves must provide for her as in other Cases of casual Impotency.

62. If Justices of Peace in Sessions make Orders for Parishes to provide Houses, or to give any Persons Maintenance who are

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are not impotent but able to work, or having any Thing to give upon, those Orders are against Law, and Justices in Sessions cannot transfer their Authority over to others, as to appoint other Justices to make an Order, &c. *Bulst. Reports* 347. *Style's Reports* 154.

63. If a Man shall be removed by Warrant of two Justices from one Place to another, and the Churchwardens or Overseers refuse to receive him, they shall forfeit 5 *l.* to the Poor of the Parish, from whence removed, upon Proof of two credible Witnesses before one Justice of, &c. and for want of Distress, to be committed to the Gaol for forty Days without Bail. 3 & 4 *W. & M. c.* 11.

64. Any one of those Justices of Peace who may appoint Overseers for the Poor, may also send to the House of Correction or common Gaol, such as will not employ themselves in Work, being thereunto appointed by the Overseers, according to 43 *Eliz. c. 2.* and the Statute 13 & 14 *Car. 2. c. 12.* extendeth not only to the Counties therein named, but also to other Counties where such great and large Parishes are.

What Justices may send to the House of Correction those who will not work.

65. If any Poor shall refuse to deliver the Stock delivered to them to work, two Justices may levy the same by Distress, and, in Default thereof, may commit such Offenders as aforesaid.

66. If the Child live in the County of *Middlesex*, and be maintained by the Parish there, and the Grandfather live in the County of *Suffolk*, the Justices of *Middlesex* can make no Order therein; but the Justices of Peace of the County of *Suffolk* must make Order to charge, &c.

67. If the Grandmother be a Person of Ability, and then marries, the Person with whom she marries is a Grandfather within the Statute 43 *Eliz. c. 2.* for by the Marriage all her Goods are given to the Husband; but with this Difference, if the Grandmother at the Time of the Marriage were of Ability, otherwise not. *Draper's Case*, also *Gerard's Case*. So also, if an Estate descend to the Wife after Marriage, the Husband shall be charged; so also may the Father be compelled to allow Maintenance to his Son's Wife (the Husband being absent) as was done in this Case of one *John Ball*, by Order, September 2. 15 *Jac. 1.* *Dalt.* 226.

68. It was resolved by the Court, that where a Man is taxed to the Parish Rates, and lives there forty Days or more after he is taxed, and without giving Notice, &c. this doth not make a Settlement within the Act; because taxing alone is not equivalent to Notice, but taxing and paying the Tax is equivalent both to the Delivery of Notice, and to the Publication of that Notice in Writing. *Talborn and Boston Parish*, 2 *Salk.* 523. 3 *Salk.* 253.

Being taxed and paying to the Parish Rates equivalent to Notice.

Sessions not obliged to give any Reason for their Judgment, no more than any other Courts of Law.

One House inhabited by several Families, are rateable severally to the Poor.

69. The Order of two Justices set forth, that the Person removed was lately settled in the Parish of C. &c. it should have been last legally settled, &c. and for that Reason it was quashed. 9 Ann.

70. The Order of two Justices was discharged upon an Appeal to the next Sessions; and upon a Motion to set aside this Order of Discharge, it was objected, that the Sessions did not say whether it was discharged for a Defect in Form, or upon the Merits; for if it was for want of Form, then the Parish from which the poor Person was removed is not bound; but if on the Merits, then it is bound; but adjudged, that the Sessions are not obliged to give any Reason of their Judgment in the Orders they make, no more than any other of the Courts of Law. *South Cadbury and Bradden Parish*, 2 Salk. 607.

71. An Order was made to send an Idiot to the Parish where his Father was last legally settled; and this was adjudged a good Order. *Hard's Case*, 2 Salk. 427.

72. It hath been resolved, that if two Houses are inhabited by several Families, though they had but one common Door into both, yet they are rateable as two Houses; so if one House is divided by a Partition, and inhabited by several Families, such are several Tenements rateable severally to the Poor; but if one Family remove, then it is but one Tenement again. *Dalt.* 253. One who possesses Lands lying in several Parishes shall be rated in every Parish according to the annual Value of the Land lying in each Parish.

73. In all Actions to be brought in Courts of Record at *Westminster*, for Money mispent by Parish Officers, the Evidence of any of the Parishioners not receiving Alms, shall be taken and admitted in the Courts aforesaid. 3 & 4 W. & M. cap. 11.

C H A P. LIV.

Testimonials.

To whom Justices may grant Testimonials.

1. ONE Justice of Peace residing near the Place where any shipwrecked Person, poor Soldier, or Mariner shall land, ought to give him a Testimonial thereof, and a Licence to pass to his own Dwelling, &c. in a convenient Time.

2. Also Justices of Peace upon Request may grant Testimonials of Loss by Fire, towards Repairing the Damages sustained by the poor Sufferers.

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Trades for employing the Poor.

1. **B**Y Stat. 43 *El. c. 2.* the Overseers of the Poor are to take Order from Time to Time, by and with the Consent of two or more Justices of Peace, for employing and setting to work the Children of all such whose Parents shall not, by the Churchwardens and Overseers, be thought able to keep and maintain their said Children; and also for setting to work all such Persons married or unmarried, having no Means to maintain them, and using no ordinary and daily Trade of Life to get their Living by; and also to raise weekly, or otherwise (by Taxation of every Inhabitant of the Parish, &c. in such Sums as they shall think fit) a convenient Stock of Flax, Hemp, Wool, Thread, Iron, and other Ware, and Stuff to set the Poor on work.

2. One Justice of Peace may give his Consent to the Churchwardens and Overseers of the Poor, for their erecting, using, and carrying on any Trade, Mystery, or Occupation, for the employing, setting to work, and better Relief of the Poor of the Parish wherein such Churchwardens, &c. reside.

Stat. 3 Car. 1. c. 4.

3. And any one Justice may send to the House of Correction, or common Gaol, such as shall not employ themselves in work, being appointed thereto by the Churchwardens and Overseers of the Poor of the Parish. *Dalt. 148.*

C H A P. LVI.

Vagrants, Vagabonds, Rogues, Beggars, &c.

1. **T**HE Statutes which relate to Vagrants, &c. are 5 *El. c. 4.* 18 *El. c. 3.* 7 *Jac. 1. c. 3* & 4. 21 *Jac. 1. c. 27.* 3 *Car. 1. c. 4.* 13 & 14 *Car. 2. c. 12.* 10 & 11 *W. 3. c. 11.* 11 & 12 *W. 3. c. 18.* 1 *Ann. c. 13.* 5 *Ann. c. 32.* 12 *Ann. c. 23.* 6 *Geo. 1. c. 19.* And those who have a Mind to read what the Law-Books speak more fully concerning them, may consult *Jenkins's Rep. 318.* 2 *Bulst. 251.* and 358. 2 *Cro. 577.* *Jenkins's Rep. 316. pl. 16.* *Styles's Rep. 168.* The Parish of *Hardington and Brisly.* 2 *Roll's Rep. 172.* *Rex versus Hollinsworth.* To treat of these Statutes fully, would swell this Work to too great a Bulk,

and some of them being wholly repealed, and others in Part, by Stat. 12 Ann. c. 23. and this little Book being designed chiefly for the Use of those who are concerned in Parish Business, I shall only mention such Parts of them as relate to that.

None to beg in the Highways.

2. And first, poor Persons appointed to ask Relief in the Parish where they dwell by the Overseers thereof, if they shall beg in the Highways, though in their own Parish, are not to be sent to the Place of their Birth, or last Dwelling, but the House of Correction. *Lamb. 427.*

3. Rogues are not to be sent to the House of Correction, but by Passes to the Place of their Birth, or to the Parish where last legally settled; and if those cannot be known, then to the Place they passed through last without being punished; and if that cannot be known, then to the House of Correction. 2 *Bullst.* 357. Rogues may not be sent by a general Passport, but from Parish to Parish.

Where the Children of a Woman vagrant dying are to be sent.

4. *Eliz. B.* being a Wanderer with three Children, born in three several Parishes, came with them to *D. in Com. Wigan'*, to her Sister, where she died, the three Children being left there. *Per Jones & Whitlock*, Judges of Assize, the Children ought to be sent to, and kept and provided for by the several Parishes where they were born, and not in the Parish where the Mother died. 2 *Bullst.* 351. And accordingly an Order was made and signed by them, and the same delivered to the Clerk of the Assizes to deliver the same to the Parties.

A Saying of the Lord Chief Justice Hale.

5. The great Lord Chief Justice *Hale*, whose Name will ever be remembered with Veneration, in the Preface to his Book concerning the Relief of the Poor, has this memorable Passage. "Indeed were there a clear Means practised for the employing poor Persons, it were an uncharitable Action to relieve them in a Course of Idleness; but when I do not know that there is such a Provision, I do not deny my Relief; because I know not whether without it he may not be starved with Hunger, and that without his own Default."

6. A vagrant Woman coming to *Shillingford* in *Berkshire*, was there delivered of a Child, and afterwards went to *Cockswell* in *Gloucestershire*, and left the Child there and ran away; two neighbouring Justices, on Complaint made, and on Examination, make an Order to remove the Child to *Shillingford*: It was objected to this Order, that it was not set forth or adjudged to be a Bastard Child; *sed non allocatur.* 2. Objection, no Adjudication of its being likely to become chargeable. But to this the Court said, it is a necessary Consequence, because it was said to be but two Years old. As to the Stat. 13 Car. 2. c. 12. being born in a Parish doth not make a Settlement if

Born in a Parish doth not make a Settlement; if born in lawful Matrimony, it follows the Father's Settlement.

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born in lawful Matrimony ; for there it must follow the Settlement of the Father ; and in this Case, being not said to be a Bastard Child, and being upon Complaint, it therefore ought to follow the Parents : But the Court held this was a Settlement by Birth till the Parents Place of Settlement could be discovered ; therefore the Order was confirmed, notwithstanding it did say it was a Bastard Child. *Adjudged Pascha 5 Ann. Reg.*

An Order for the Payment of 2 s. for taking up a Vagrant begging, &c.

7. Berks. ff. **W** Hereas it appeareth unto me, that A. B. a Vagrant, did wander and beg in the Parish of D. in the County of, &c. and passed through the said Parish unapprehended, and afterwards was taken in the Parish of C. in this County, wandering and begging there, by C. D. an Inhabitant of the said Parish of C. and was by him brought before me J. S. Esq; one of his Majesty's Justices of Peace for the said County, in order to be examined and punished as by Law he ought. Now I do hereby order the Headborough of the said Parish of D. thro' which the said A. B. passed unapprehended as aforesaid, to pay unto the said C. D. who did apprehend him, the Sum of 2 s. on Demand. Given under my Hand and Seal, &c.

See more *Ch.* XXXIII. XLII. XCI.

CHAP. LVII.

Workhouses.

1. **B**Y Workhouses, I do not mean the *Bridewells*, or Houses of Correction, established in each County by 39 *Eliz. cap. 4.* and 7 *Jac. 1. cap. 4.* because the treating of them will come more properly under the Title Constables and Vagrants ; nor those established pursuant to the Stat. 43 *El. c. 2.* 3 *Car. 1. cap. 4.* of which something has been said already ; but those settled in Pursuance of 13 & 14 *Car. 2. c. 12.* 8 & 9 *W. 3. c. 30.* 2 *Ann. c. 8.* and 9 *G. 1. c. 7.* and see Houses of Correction, c. 42.

2. By Stat. 13 & 14 *Car. 2. c. 12.* a Law was made for erecting of Corporations within the Bills of Mortality, whose sole Business it should be to take Care of and to employ the Poor ; pursuant to which there was a Corporation erected in

Stat. 13 & 14
Car. 2. c. 12.
for setting up
Workhouses.

the City of *London*, who rightly observing that the Poor could neither be so well taken Care of, nor set to work, while they remained dispersed in a thousand By-holes and Corners where they lived, as they might be in Case they were all to inhabit together in some proper Place to be provided for them, purchased a large House in *Bishopsgate-street* for that Purpose; where a great Number of Poor, but especially Children, are maintained and religiously educated and employed in spinning of Wool, knitting, or sewing, &c. They are dieted and clothed, and taught to read, write, and cast Accounts, whereby they are qualified for Services and Employments, and are accordingly placed forth Apprentices and to Services.

3. By this Act, Power is granted for the President and Governors of this Corporaiton, to purchase or take any Lands, Tenements or Hereditaments, not exceeding 3000 *l. per Ann.* and any Goods or Chattels whatsoever of the Gift, Alienation or Devise of any Person or Persons.

Stat. 7 & 8
W. 3. for setting up a
Workhouse at
Bristol.

4. This Corporation in *London* having met with such good Success, a Statute was made 7 & 8 W. 3. for the erecting such a Corporation in the City of *Bristol*, by the Name of the Governor, Deputy-Governor, Assistants and Guardians of the Poor. This Corporation hath the Care of, and providing for all the Poor of the said City; except such as are provided for by charitable Gifts, or in Hospitals or Alms-houses, and may purchase, take or receive any Lands, &c. and of causing Rogues, Vagrants, Beggars, &c. to be apprehended and set at work in their Workhouses.

Stat. 2 & 3
Ann. for Worcester
Workhouse.

5. This produced another Act in 2 & 3 Ann. for erecting a Corporation for providing for the Poor in the City of *Worcester*, called by the Name of the Guardians of the Poor of the City of *Worcester*; and is impowered to hold Courts, summon Persons, &c. and also to provide Materials for setting the Poor to work; compel idle Persons and poor receiving Alms, and poor Children, to dwell and work in Workhouses, &c. And they have Authority to contract with any Parish in the County of *Worcester*, for the receiving, employing, and setting to work Poor in their Workhouses, &c. This Act was enforced and continued for ever by another Act made 3 G. 2.

Stat. 9 Geo. 1.
c. 7. for setting
up Workhouses
in Parishes.

6. These Corporations and Workhouses being thus set up and established in particular Places with good Success, at length produced the general good Statute made 9 G. 1. c. 7. whereby it is enacted, that the Churchwardens and Overseers of the Poor of any Parish (with the Consent of the major Part of the Parishioners) may purchase or hire any House or Houses in the Parish or Place, and contract with Persons for the lodging, keeping, and employing of poor Persons, and there they are to keep them, and take the Benefit of their Work and Labour for the better Maintenance and Relief of such poor Persons; and

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and in Case any poor Person shall refuse to be lodged, kept and maintained in such House or Houses, he shall be struck out of the Parish Books, and not be intitled to Relief.

7. Where Parishes are small, two or more of such Parishes, with the Approbation of a Justice of Peace, may unite in purchasing or hiring Houses for the Purposes aforesaid; and Churchwardens, &c. of one Parish (with the Consent of the major Part of the Parishioners) may contract with the Churchwardens, &c. of any other Parish for the Lodging and Maintenance of Poor. But no poor Persons or their Apprentices, Children, &c. shall acquire a Settlement in the Parish, Town or Place, to which they shall be removed by Virtue of this Act.

8. This Statute had such excellent Effect, that I have now by me a true and full Account of no less than above one hundred and thirty Workhouses already set up and established in England; and more are setting up every Day, whereby the Poores Rates are decreased one Third, if not one Half, in most of the Places where such Workhouses have been set up.

9. See the Statute 13 G. 1. c. 19. for providing for the Poor in Gloucester; for which Purpose a Corporation is erected, hath a considerable Estate vested in it, and is made capable to purchase Lands not exceeding 1000 *l. per Ann.*

10. See also 1 G. 2. cap. 20. for erecting a Workhouse in Canterbury, and a Corporation of Guardians for the Poor, capable to purchase 400 *l. per Ann.* and to set the Poor at work; and to agree with any Parish in Kent for setting their Poor at work.

11. See also 3 Geo. 2. c. 23. for setting the Poor at work in Worcester, and a Corporation of Guardians of the Poor erected: And

12. 4 Geo. 2. c. 25. which confirms an Agreement between the Guardians of the Poor and the Mayor, &c. of Worcester; and vests an Hop Market there in the Guardians for the Benefit of the Poor, under a Rent of 60 *l. per Ann.*

A Contract for Lodging and Maintenance of Poor, by Virtue of the Stat. 9 G. 1. c. 7.

13. **B**E it remembered that it is contracted this Day, &c. in the Year, &c. between A. B. and C. D. Churchwardens, E. F. and G. H. Overseers of the Poor of the Parish, &c. of the one Part, and J. K. and L. M. of, &c. Yeoman, of the other Part, that they the said J. K. and L. M. or one of them, shall and will, during the Space of, &c. next coming, at their, or one of their own proper Costs and Charges, in the House of, &c. find, provide and allow, or cause to be found, provided
and

and allowed unto and for N. O. P. Q. R. S. &c. poor Persons of the Parish of, &c. aforesaid, sufficient Lodging, Meat, Drink, and all other Things necessary for their and every of their Keeping and Maintenance, they the said J. K. and L. M. being paid and allowed by them the said A. B. C. D. E. F. &c. the Churchwardens and Overseers of, &c. aforesaid, the weekly Sum of, &c. for the same, which they the said A. B. C. D. E. F. &c. do hereby covenant for themselves and their Successors, well and truly to pay, or cause to be paid to the said J. K. and L. M. as the same shall become due, or they the said J. K. and L. M. being allowed the Work, Labour and Service of them the said N. O. P. Q. R. S. &c. from Time to Time, in such Work and Labour as they the said J. K. and L. M. shall think fit to employ them about. In Witness, &c.

C H A P. LVIII.

Of Surveyors of the Highways.

1. **B**EFORE I treat of the Office of Surveyors of the Highways, it may not be improper just to mention a few Things relating to Ways in general. And first, there are three Sorts of Ways, viz. a Foot way, a Bridle or Horse-way, and a Cart-way. The first is called *Iter*, *quod est Jus eundi vel ambulandi hominis*, where a Man hath Right to go and come, and was the first or prime Way. The second is both a Foot-way and a Horse, which is called *Aëus ab Agendo*, and vulgarly is called Pack and Prime Way; because it is both a Foot-way, which was the First or Prime Way, and a Pack or Drift Way also. The third is a *Via* or *Aditus*, which contains both the other two; and also a Cart-way or Carriage-way, for this is *jus eundi, vehendi & vehiculum & jumentum ducendi*, a publick Way for Carts and Carriages, and driving Cattle, &c. and this Way is twofold, viz. *Via Regia*, the King's Highway free for all Men, & *communis strata*, or a private Way belonging to a City or Town, or between Neighbours and Neighbours.

2. And these private Ways also, which one or more Men have either by Prescription or Charter through another Man's Ground, are likewise divided into a Way in Gros and a Way Appendant. A Way in Gros is that Way which a Man holds principally and solely in itself; as if a Man hires a Close, and hath a Covenant for Ingress and Regress, to and from the said Close, through the Ground of some other Man, through which he might not pass, this is a Way in Gros; or a Way in Gros may

Three Sorts of Ways.

Highway and Private Way.

A Way in Gros, and a Way Appendant.

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may be that which the *Civilians* call personal ; as when one covenants for a Way through the Ground of another Man for him and his Heirs. A Way Appendant is that Way which a Man hath adjoined or annexed to some other Things as appertaining and belonging thereunto, and may be that Way which the *Civilians* call real ; as where a Man purchaseth a Way through the Ground of another Man, for such as do or shall dwell in this or that House, or that are the Owners of such a Manor for ever, &c. this is a Way Appendant to that House or Manor, &c.

3. The King's Highway (*Regia Via*) leading either to the Market, or from Town to Town, &c. the Freehold and Soil thereof, and the Interest of the Trees and other such Profits thereupon growing, belong to the Lord of the Soil, or Lord of the Manor. *Dalt.* 76. And he may bring his Action for digging therein, or any other like Trespass. To whom the Soil of the Highway belongs.

4. The Authority of Justices of Peace is limited only to common Highways, and not to private Ways ; so that the Presentment, &c. of a Justice of Peace of a private Way, is not allowed to be good. *4 Mod. Rep.* 38.

5. If a Way leads to a Market, is a Way for Travellers, and has a Communication with a great Road, &c. it is a Highway ; but if it leads only to a Church, to a Village, Fields, &c. there it is a private Way. *Vent. Rep.* 189. Any Cart, Horse or Foot-way common to all People, is the King's Highway, (whether it directly lead to any Market-Town or not) and a Nuisance in any of the said Ways is punishable by Indictment. *6 Mod. Rep.* 255. And if there be an Highway in an open Field, when the Fields are bad in the Winter, Travellers may go on the Outlets of the Lands adjoining, being warranted by Custom ; for the King's Subjects are to have a free Passage, and such Outlets are Parcel of the Way. *1 Roll. Abr.* 390. *Dalt.* 98. Where Highway is bad, Travellers may go on the Outlets.

6. A private Way, which leads from a Village, &c. to the Parish Church or Fields without any Communication with a great Road, is to be repaired by the Village or Hamlet, and sometimes by a private Person (*contra* of Highways, for there the whole Parish shall be charged) ; if such a Way be out of Repair, every Inhabitant may have an Action, and for stopping a Way to the Church they may have an Action upon the Case. *1 Vent.* 208.

7. All Highways of common Right are to be repaired by the Inhabitants of the Parish in which the Way lies, unless there be some special Matter to tax the Repairs upon others ; as where a Person by an Inclosure straitens a Highway on both Sides, though the Parish repaired it before, yet now he is obliged to maintain it at his own Charge ; but if he lays open the Inclosure, so that the Way remains as it did before, All Highways of common Right are to be repaired by the Parish, &c.

fore, then the Parish is to repair it again. *Cro. Car.* 366. *Term. Pasch.* 7 *Jac.* 1. it was resolved, that all the County ought to repair a Highway, where no particular Persons are bound to repair; because the whole County have their Ease and Passage by it. *Co. Rep.* 13.

A Person may be obliged to repair a Way by Tenure.

8. A Person may be obliged to repair a Way by Tenure of Lands, and Lands have been often given for the Maintenance of Highways. See Statute 22 *Car.* 2. *cap.* 12. A particular Person may be bound to repair a Highway by Prescription, and so may a Corporation. *Latch Rep.* 206. The King by the Common Law might award his Commission for amending the Highways and Bridges throughout the Realm. *Dalb.* 77. And no Highway can be changed, &c. without the King's Writ of *Ad quod damnum*, and Licence thereupon, on Inquiry, whether it will be prejudicial to the Publick, &c. 3 *Cro.* 267. A Tenant at Will of a House adjoining to a common Bridge, may be indicted for permitting it to be so much out of Repair, that it is ready to fall upon the Queen's Subjects passing, &c. *Regina v. Watson*, 2 *Ld. Raym.* 856.

Clergymen obliged to Repairs of Highways.

9. Though private Ways are to be repaired by the Village, and sometimes by a particular Person; yet publick Ways are to be repaired by the Parish, unless some others in particular are thereto obliged by Custom or Prescription; and even Clergymen, who are liable to all Charges imposed by Acts of Parliament, unless particularly excepted, are certainly liable to be charged for the Repairs of the Highways; and 'twas so adjudged by *Hale* and the whole Court. *Trin.* 37 *Car.* 2. *B. R.* 2 *Lev.* 193. 3 *Keb.* 476. *Webb* ver. *Batchelor*, *S. C.* is reported in 1 *Vent.* 273. The Indictment must say, that the Way is out of Repair. *Reg. v. Inhab. of Stretford*, 2 *Ld. Raym.* 1169, 1170. and *ibid.* Inclosing the Land next adjoining to the Highway, will draw upon the Owner of the Land the Charge of repairing the Highway; by *Holt C. J.* and *Duncomb's Case* there cited.

How Surveyors of the Highways are to be chosen.

10. The Statutes which relate to the Highways in general are, 2 & 3 *P. & M.* c. 8. 5 *El.* c. 13. 18 *El.* c. 10. 14 *Car.* 2. c. 6. 22 *Car.* 2. c. 12. 2 *W. & M.* c. 8. 3 & 4 *W. & M.* c. 12. 7 & 8 *W.* 3. c. 29. 8 & 9 *W.* 3. c. 16. 1 *Ann.* c. 18. 6 *Ann.* c. 29. 9 *Ann.* c. 18. 1 *G. I.* c. 11. 1 *G. I.* c. 52. 5 *G. I.* c. 12. I find no Mention made in our Law Books of Surveyors of the Highways, before 2 & 3 *P. & M.* when a Statute was made, wherein it was enacted, that the Constables and Churchwardens, &c. of every Parish should yearly call together a Number of the Parishioners, and then elect and choose two within the Parish to be Surveyors of the Highways for the Year following, who shall forthwith take that Office upon them, under the Penalty of a Fine.

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11. By Stat. 5 *El. c. 13.* the Surveyors have Power to turn Water-courses hurtful to the Highway into any Man's Ditch; and to take the Rubbish ready dug; and for Default of Gravel to dig in any Grounds except Houses, Orchards, Gardens and Meadows, filling up the Pits, &c. and of appointing six Days in the Year for the Amendment of the Highways. Surveyors have Power to turn Water-courses, &c.

12. By 18 *El. c. 10.* a Cottager, if he be in the Subsidy 5 *l.* in Goods, or 40 *s.* in Land, shall find two able Men; every Person having a Plough-Land in several Parishes, shall be chargeable with a Team or Draught in that Parish where he dwells; howbeit having intire Plough-Lands in several Parishes, he shall for every one of them find a Team in the several Parishes where they lie, although he be not Inhabitant there. What Persons are chargeable to the Highways.

13. By 22 *Car. 2. cap. 12.* Trustees of Lands given for Maintenance of Highways, &c. shall let them to Farm at the most improved yearly Rent without Fine. The Justices of Peace in their open Sessions may order the Improvement and Employment thereof (other than of Lands given to Colleges and Halls in their University having Visitors of their own) according to the Will of the Donor, if they find that the Persons intrusted have been faulty; and upon such Orders Appeal to *Chancery* lies, as to a Decree of a charitable Use. How Trustees for Lands given to Highways are to act, &c.

14. The Occupiers, and where there are none, the Owners of Lands, Houses, &c. adjoining to the Highways, Streets, &c. in the Suburbs and Liberties of *London*, Borough of *Southwark*, and City and Liberty of *Westminster*, which are or shall be paved, shall be liable to the Scavengers Rates, as by 14 *Car. 2. c. 2.* is appointed; and where any Ground lies, so as there may be a Dispute who ought to repair the same, the Justices of the Peace in their Quarter-Sessions shall determine it. *Ibid.* Occupiers of Houses in London liable to be rated to Scavengers, &c.

15. If any fail to make their Day's Labour, or neglect to mend their Carriages, &c. the Surveyors shall complain to the next Justices of Peace, who upon Oath thereof by one Witness may levy by Distress and Sale of Goods, for every Day-Labourer (without reasonable Cause) 1 *s.* 6 *d.* for every Man and Horse 3 *s.* and for every Cart with two Men 10 *s.* The Penalties to be employed for repairing the Highways. *Ibidem.* The Method of forcing People to do their Day's Work.

16. We shall treat next, *First*, Of the Duty of Surveyors of the Highways. *Secondly*, Of the Power of the Justices of Peace relating to Highways.

17. But the abovesaid Statutes being in many Particulars defective, the Statute of 3 & 4 *W. & M. cap. 12.* was made, whereby it was enacted, that every Year on the 26th Day of *December*, unless that happen on *Sunday*, and then the Day following, the Parishioners must meet and make a List of a competent Number of Persons thus qualified. 1. They must have an Estate of 10 *l.* *per Annum*, either in their own Right, or The Qualification of Surveyors, and when to be chosen, &c.

or in the Right of their Wives. 2. Or they must be worth 100 *l.* in personal Estate. 3. Or rent 30 *l. per Annum*. If there are not any Persons in the Parish thus qualified, then a List must be made of the most sufficient Persons.

Penalty of
Constables
neglecting to
return Lists,
&c.

18. The List must be returned to two or more Justices of the Peace near the Division in which the Parish lieth, at a special Sessions to be held on the third Day of *January*, or within fifteen Days after. If the Constables neglect to return such List, each of them forfeits 20 *s.* Out of this List so returned, the Justices at that Sessions do appoint one or more to be Surveyors, &c. by an Order under their Hands and Seals.

Penalty of
Surveyor refus-
ing to act.

19. Within six Days after the Person thus appointed has Notice thereof given him by the Constables, by leaving a Copy of the Order at the House of the Party, he must take upon him the Office. And if he refuse after being so nominated and appointed, and served with the Order, then he forfeits 5 *l.* to be levied by Warrant from the Justices of the same Division, or in Default thereof from the neighbouring Justices upon Oath made, &c. and one Moiety of the Forfeiture is to go to the Informer, and the other is to repair the Highways, and the Justices may again appoint one or more Surveyors, who upon Notice must take upon him or them the Office, &c. under the same Penalty.

Surveyors
Duty, &c.

20. Within fourteen Days after the Acceptance of his Office, he must, and so from Time to Time every four Months view the Roads and Bridges, &c. 1 *Geo. 1. c. 52.* He must present upon Oath to the special Sessions, such Ways which are not in Repair, or he forfeits 5 *l.* unless the special Sessions shall allow his Excuse. *Ibid.* He must every four Months from Time to Time give publick Notice in the Parish Church the next *Sunday* after Sermon ended, of what Default he finds; and if not amended, within thirty Days afterwards by those who ought to repair, &c. then the Surveyor must within other thirty Days next following amend the same. He must give an Account upon Oath at a special Sessions, of all Money that comes to his Hands, and how disposed, &c. and if any remains, he must deliver it to the next Surveyor, or forfeits double the Value of what the Justices shall judge in his Hands, to be levied by Warrant of two Justices; one Part to the Informer, &c.

21. For any Neglect of his Duty he is to forfeit 40 *s.* one Moiety to the Informer, the other to amend the Highways; to be levied by a Warrant from two Justices. But if he neglect to give an Account of the State and Condition of the Highways, more especially of such Faults and Defects as want to be amended, and of those who are bound to find Labourers and Teams, he forfeits 5 *l.* one Moiety to the Informer, the other to amend the Highways; unless the special Sessions allow a reasonable Excuse.

22. The first seasonable Time that comes, must be taken by the Surveyors to repair the Ways, so as it may be done before Harvest, if possible; and they must repair those Ways first, which the Justices in their special Sessions shall order to be repaired, if any such Order there be. He is to appoint six Days for providing Materials to amend the Ways, giving Notice of the several Days by him appointed; at which Time all Persons liable must work, and the Ways must be amended before the Feast of St. Luke. If a Person be indicted upon Stat. 22 & 23 Car. 2. cap. 17. §. 6. for not working in the Repair of the Highways, the particular Days appointed must be mentioned in the Indictment; for, it will not be sufficient to say only, that six Days were appointed between such and such Days, for the Work. And Notice ought to be given accordingly, otherwise the Appointment is ill. *Regina versus Kime*, 2 *Ld. Raym.* 858.

23. Every Person keeping a Team of Horses, must send out a Cart and two able Men; and if he keep Oxen, then he must send out a Wain, and two Men to work eight Hours every Day so appointed by the Surveyor, on Pain of 10 s. for every Default of a Cart with two Men; and 3 s. for every Man and Horse to be employed in mending the Highways; and as many Draughts as he keeps, so many he must send out. If the Surveyors do not think all the Carriages in the Parish necessary, then the Person whose Carriage is spared must send out two able Men, or forfeits 10 s. for every Man not sent. Every one, be he Labourer, and Cottager, or Householder able to labour, and being no hired Servant by the Year, shall by themselves, or one sufficient Labourer, for every of them, work each of these six Days, or forfeits by Statute 22 Car. 2. c. 12. 1 s. 6 d. per Day.

What Persons must send out Teams, &c.

24. Formerly 100 Acres, but now 80 Acres are deemed, but by Statute 7 & 8 W. 3. c. 29. 50 l. per Ann. is a Plough-Land as to Highways. *Raym.* 186.

25. In such Counties where Carts are not used, the Inhabitants must send Horses, according to the Custom of the Place with able Persons, &c. under the like Penalty.

26. All Land in the Parson's Hands, except only his Glebe, is chargeable.

27. For levying the Penalties, the Surveyor may complain to the next Justices, &c. who on Oath made of the Default, may send their Warrant to levy the Forfeiture by Distress and Sale of Goods, viz.

Method of levying the Penalties, &c.

	l.	s.	d.
On a Man neglecting	00	01	06
For every Man and Horse, &c.	00	03	00
For every Cart with two Men	00	10	00

For

For every Day they shall neglect ; and the Penalties when levied must be employed towards the amending the Ways.

28. If Bushes, Boughs, &c. grow, stand, or over-hang any Highway not twenty-foot broad, the Owner of the Soil within ten Days after Notice given by the Surveyors, is to cut them down, or be liable to the Penalty of 5 s. to be levied by Distress on Warrant of two Justices on Oath of one Witness ; one Moiety to go to the Informer, the other towards Repairing of the Ways. 3 & 4 W. & M. c. 12.

29. A Surveyor may make every Cartway leading to a Market-Town eight Feet broad at least, and Causeways for Horses must be three Feet broad. *Ibid.* The Surveyors, &c. Surveyors may take Stones, or dig, &c.

may take Stones and Rubbish already dug out of any Quarry without Leave of the Owners, and they may gather Stones in any Lands without Trespass, and may dig for Gravel in any Ground near the Highways, so it be not in a House, Garden, Orchard, or Meadow ; and it must be but in one Pit or Hole not above 20 Feet in Length and Breadth, which must be filled up by Order of the Surveyors within one Month, under Penalty of 5 Marks ; but they cannot dig for Stones without Leave of the Owner of the Land. 5 El. c. 13.

30. Those who are convicted by Oath of one Witness before one Justice of the Division, or upon his own View, of pulling up, cutting or removing any Post, Block, great Stone, Bank of Earth, or other Security of a Horseway or Causeway from Waggon, Carts, &c. forfeit for every Offence 20 s. to be levied by his Warrant, by Distress and Sale, &c. one Moiety to the Surveyors to repair the Ways, the other to the Informer. 8 & 9 W. 3. c. 16.

How they may be re-imburfed their Money expended, &c. 31. In Parishes where the Surveyors are forced to buy Sand, Gravel, or other Materials with their own Money, in order to be re-imburfed, they must attend the Justices at a special Sessions, and swear what Money they have expended, &c. and then two Justices at the Sessions may make a Rate upon every Inhabitant, Parson, Vicar and other Occupier of Lands, Tithes, Woods, &c. in the Parish ; which Rate being allowed by the said Justices in their special Sessions may be levied on Persons refusing to pay, by Distress, &c. 3 & 4 W. & M. c. 12.

Penalty of those refusing to scour their Ditches, &c. 32. If those who have Lands adjoining to the Highways, in which Ditches ought to be scoured, neglect to scour them as often as there is Occasion, and to lay Trunks or Bridges where there are Cartways into any Ground that the Water may have a free Passage, for ten Days after Notice from the Surveyors, they forfeit 5 s. to be levied by Warrant of two Justices of the same Division, &c. upon Oath made, &c. one Moiety to the Informer, the other to amend the Ways. 3 & 4 W. & M. c. 13. And the Person who ought, and who neglects or delays for

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for thirty Days after Notice by the Surveyor, to scour and keep open his Ditches near the Highways, on Oath thereof before the Justices at their special Sessions, forfeits 2 s. 6 d. for every eight Yards of Ditching not scoured and kept open, to be levied by Warrant under the Hands and Seals of the Justices in special Sessions by Distress and Sale, &c. 1 Geo. 1. c. 62. If in scouring the Ditches they lay the Soil in the Highways, and suffer it to lie there eight Days after Notice, they forfeit not exceeding 5 l. nor under 20 s. to be levied and employed, as aforesaid. *Ibid.*

33. Surveyors have Power to turn any Spring or Water-Course out of the Highways into those Ditches, and where the Ditches already made are not sufficient to carry away the Water, they may make new Ditches and Drains, in and thro' the Lands adjoining, which they must keep scoured; and to that Purpose may come with Workmen upon the said Lands without being Trespassers. 3 & 4 W. & M. c. 12. Surveyors have Power to make Ditches and Drains, &c.

34. All Persons laying any Thing in a Highway not twenty Feet broad, forfeit 5 s. to be levied and employed as aforesaid; and if Timber, Stone, Hay, Straw, Stubble, &c. or other Matter for making Dung, or on any other Pretence be laid in any Highway, those who possess Lands next adjoining may remove and dispose thereof to their own Use, nor can they lay Logs or Timber in the Highways, tho' there is sufficient Room for Travellers left. *Ibid.* Penalty of Persons laying Timber, &c. in the Highway.

35. All Matters concerning the Highways must be determined in the County where they lie, and not elsewhere, and no Prosecution but within six Months after the Offence committed. The Party grieved may appeal from any Act done by the Justices to the Quarter Sessions, whose Order shall conclude all Parties, and no Presentment, Indictment, or Order shall be removed by *Certiorari*. Nor no Fine, Issue, Penalty, or Forfeiture for not amending Highways shall be returned into the Exchequer, or other Court; but shall be levied into the Hands of the Surveyors to be applied towards the Amendment of such Highways. And if any Action be commenced against those who put that Act in Execution, they may plead the General Issue, and give the Act itself and the special Matter in Evidence; and if the Plaintiff be nonsuited, discontinue, or a Verdict given against him, the Defendant shall have double Costs. 3 & 4 W. & M. c. 12. Where Matters concerning Highways are to be determined, &c.

36. By Stat. 7 & 8 W. 3. c. 29. Surveyors compounding with, or receiving any Reward whatsoever of Offenders against that or any other Act about Highways by Way of conniving at, or overlooking such Offences, forfeit 40 s.

37. If any Surveyor of the Highways neglect to erect or fix a Stone or Post, where two or more Crossways meet, with neglecting to erect or fix a Stone or Post at Crossways forfeit 10 s.

an Inscription thereon in large Letters, containing the Name of the next Market-Town, to which each of the adjoining Highways leads, according to the Precept to him directed by the Justices at their Special Sessions for the Highways, he forfeits 10 s. to be levied by Warrant from one Justice, and employed towards erecting such Stone or Post, and the Overplus (if any) in repairing the Highways. *Stat. 8 & 9 W. 3. c. 16.*

The Form of a Presentment of a Highway out of Repair made by a Surveyor.

38. **I** A. B. Surveyor of the Highways, within the Parish of, &c. in the County of, &c. do hereby present, that the Highway leading from, &c. to, &c. in the said Parish is very much out of Repair, and dangerous to all Travellers who pass that Road, and that the Inhabitants of the said Parish, of &c. ought of Right to repair and amend the same. I do also present upon Oath, that C. D. of the Parish of, &c. has lately laid several great Logs, and other Timber in the said Highway to the great Annoyance thereof, &c.

The Power and Duty of Justices of Peace about Highways.

When Justices are to hold a special Sessions for Highways.

39. **B**Y Stat. 1 Geo. 1. c. 48. the Justices of the Division are to hold a special Sessions in the Division, &c. every Year on the third of January, or within fifteen Days after; of which they are to give Notice ten Days before they hold the same to every Constable within the Division.

The Justices Precept to the Constables to bring in a List of Persons fit to serve as Surveyors.

40. **T**hese are to give Notice, That on Monday the third of January next, at the House of, &c. there will be a special Session held for putting the Acts of Parliament in Execution relating to the Repairing the Highways, when and where you are hereby required personally to be and appear, and to bring with you a List of the Names of the Persons within your Parish fit to be Surveyors of the Highways for the Year ensuing, (viz.) such as have an Estate of 10 l. per Annum, have a personal Estate to the Value of 100 l. or as do rent 30 l. a Year; and if you have not any such List of the Names of the most sufficient Persons in your said Parish, according to the Direction of the Acts of Parliament in that Case made and provided, &c.

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41. The of the List Parish with Refusal of 5 l. by nels, then c. 48.

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41. They are to nominate under their Hands and Seals out of the Lists brought unto them one or more Surveyors of every Parish within the Division for the Year ensuing; and upon the Refusal of the Person so nominated, and paying the Forfeiture of 5 *l.* by Warrant granted upon Oath of one credible Witness, then they are to nominate some other fit Person. 1 G. 1. c. 48.

An Appointment of a Surveyor of the Highways by Justices of Peace.

At a special Sessions held for the Highways on, &c.

42. **W**E whose Names are hereunto subscribed, being his Majesty's Justices of the Peace in the County of, &c. do hereby appoint A. B. of, &c. (one of the Persons mentioned in a List this Day returned to us by, &c.) Constable of, &c. Surveyor of the Highways in the Parish of, &c. aforesaid, for and during the Space of one whole Year next ensuing the Date hereof, according to the Form of the Statute in that Case made and provided. Given, &c.

43. Two Justices may allow a reasonable Excuse of a Surveyor, not viewing, or not presenting every four Months in what Condition the Ways are.

44. If Notice is given on Sunday after Sermon next after any Default found, if within thirty Days after such Notice, the Party who ought to amend it neglect so to do; and if the Surveyor within thirty Days afterwards doth amend it, and the Party neglecting refuseth to pay the Charges; then upon Oath made of Notice, &c. as aforesaid, the Surveyor shall be repaid such Charges as the Justice shall think fit, which is to be levied by his Warrant, &c.

45. They are to hold a special Sessions once in four Months, and summon the Surveyors thereunto, and to tell them what they are obliged to do; and at this Sessions the Justices may by Writing under their Hands and Seals order the Reparation of those great Roads which do most want repairing in that Hundred where the Session is, which shall be first repaired, and in what Time and Manner. They may likewise at this Sessions examine on Oath any Person who can give an Account of Money which ought to be applied for mending the Highways, and levy the Penalties, and dispose of the Forfeitures; one Moiety to the Surveyors of the Highways where the Offence was done, towards the Repairs thereof, and the other to the Informer. And the next Quarter-Sessions may make such Order

Persons neglecting to amend Ways after Notice, Surveyors may amend.

Justices may examine on Oath Persons who can give an Account of Money given to Highways

der as they think fit, where any Person shall find himself aggrieved. *Stat. 1 G. 1. c. 48.*

46. If any Fine or Forfeiture imposed on any Parish be levied upon any particular Inhabitant, then upon Complaint thereof to the Justices at the Special Sessions, they or two of them may by their Warrant cause a Rate to be made to repay the Person or Persons, which Rate the Surveyors shall levy, and pay within a Month after the Making thereof.

Justices in Quarter-Sessions may cause Assessments to be made, &c.

47. The Justices in their Quarter-Sessions not being satisfied that the Ways can be amended without the Help of the Act of 3 & 4 W. & M. c. 12. may cause Assessments to be made on every Person usually ratable to the Poor, not exceeding 6 d. in the Pound for every 20 l. personal Estate; these Assessments must be made and levied by such Persons, and in such Manner as the Justices in their Sessions shall direct and appoint, and the Money must be employed according to their Order for repairing the Highways; and if not paid within ten Days after Demand, may be levied by Distress, notwithstanding the six Days Work hath been performed. Any Person grieved by such Assessment may appeal to the Quarter-Sessions, whose Order shall be final.

Persons aggrieved may appeal to next Quarter-Sessions.

48. The next Quarter Sessions may make such Order as they shall think fit, where any Person finds himself aggrieved by any Thing done in the Execution of the Stat. 1 G. 1. c. 48. except for the Neglect of scouring Ditches, and carrying away the Soil taken out of the same, or who shall not carry away Stone, Timber, Straw or Dung left in the Highways, or not remove any other Annoyances by Water-courses, &c.

49. The Justices of *Middlesex* may at their Quarter-Sessions make Rates for paving *Kensington*, &c.

Justices neglecting to do their Duty, forfeit 5 l.

50. The Justices neglecting or refusing to do what is required by the Act, forfeit 5 l. one Moiety to the Prosecutor to be recovered by Action of Debt in any of the King's Courts of Record, the other Moiety to be employed to amend the Highways where the Prosecutor liveth.

Quarter Sessions may appoint Scavengers, and make Assessments in all Cities and Market-Towns, &c.

51. The Quarter-Sessions may appoint Scavengers, and order the Repairing and Cleansing the Streets in any City or Market-Town, and may appoint Persons to make Assessments on every Owner and Occupier of Lands and Houses equally, not exceeding 6 d. per Pound per Annum, to defray the Charges of such Scavengers; which Assessment being allowed under the Hands and Seals of the Justices, &c. may be collected by such Persons as they appoint, and be levied by their Warrant on the Goods of those who shall not pay it within eight Days after Demand; and the Money thus raised shall be employed and accounted for according to the Direction of the Justices for repairing and cleansing the Streets. 1 G. 1. c. 52.

52. The Sessions shall or his Account to be recorded

53. And the general which the sent; which sented do & M. c. of Survey

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54. Berk to wit. the Peace divers Fe said Coun aforesaid, 22d Day of the Re Peace in Lady Eliz at Westminster Reign her Rignute, intri made 3 & his own away with leads from aforesaid, called B. S. in the paired an Statute a that the in and by said wit. Necessary

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52. The Servants or Clerks of the Justices at their special Sessions shall not take any Thing of a Surveyor for his Oath, or his Account given in to them, upon the Forfeiture of 10 l. to be recovered in any Court of Record. *Ibid.*

53. Any Justice may upon his own Knowledge present at the general Sessions any Offence concerning Highways, upon which the Court may assess a Fine, though the Offender is absent; which Fine shall not be taken off, unless the Party presented do certify the Amendment of the Ways, by 2 & 3 P. & M. c. 8. and 5 El. c. 12. also he may present Defaults of Surveyors, and of all others relating to the Highways, &c.

Any Justice on View may present any Offences concerning Highways, &c.

The Form of which Presentment is as followeth.

54. Berks, **B**E it remembred, that J. S. of, &c. one of the to wit. Justices of the Lord the King, assigned to keep the Peace in the County aforesaid, as also to hear and determine divers Felonies, Trespasses, and other Misdemeanors perpetrated in the said County at this General Sessions of the Peace for the County aforesaid, held at Reading within the County aforesaid on the 22d Day of October in the Year of the Reign before A. B. &c. Justices of Peace in the County aforesaid, by Virtue of a Statute of the Lady Elizabeth, late Queen of England, in a Parliament held at Westminster on the 12 Day of January in the fifth Year of her Reign, and according to the Form and Effect of the said Statute, intituled, An Act for the Continuance of the Statute, made 3 & 4 P. & M. for the Amendment of Highways, upon his own View presented, that a certain common and ancient Highway within the Parish of M. in the County aforesaid, which leads from the Parish of F. to the Town of L. both in the County aforesaid, the same being a Market-Town, from a certain Place called B. in the Parish of M. aforesaid, to a certain Place called S. in the Parish of M. aforesaid, is not well and sufficiently repaired and amended, according to the Form and Effect of the Statute aforesaid, but that the same is now in great Decay; so that the Subjects of the said Lord the King cannot pass or travel in and by the same without great Danger in the Highway aforesaid with their Horses, Waggon, Carts, Carriages, and other Necessaries as they used and ought to do.

A Presentment by a Justice of Peace for not repairing a Highway, said, upon his own Knowledge; whereas it ought to have said, upon his View; it was quashed for this Fault. Comb. 65.

The Order thereon is as followeth,

55. **U**PON which at the same General Sessions of the Peace there held the Day and Year aforesaid, the aforesaid Justices of the Lord the King, assigned to keep the Peace of the said Lord the King in the County aforesaid, have assessed and imposed a Fine of 20 l. to be levied on the Inhabitants of the said Parish of M. by Default of whom the said Highway is not sufficiently repaired according to the Form of the Statute aforesaid, if the said Highway shall not be sufficiently repaired and amended before the Feast of St. John the Baptist next ensuing the Date hereof.

And Conviction cannot be traversed.

56. *N. B.* That upon such a Conviction, the Want of Repairs of the Highways cannot be traversed; but the Defendant may plead that some other Person ought to repair, and traverse that he ought not; but the Decay being upon View of a Justice of Peace cannot be gainsaid or traversed. 2 Saund. Rep. 160.

57. Every Justice knowing that any Officer has received Estreats for levying Forfeitures, &c. and neglected, or not accounted, and paid it between the first Day of March and the last Day of April to the Constables, &c. may present it.

Two Justices (Quorum 1.) may take the Account of High Constable, &c.

58. Two Justices (*Quorum unus*) may take the Account of a petty Constable, may compel him to pay the Fine levied to the High Constable, or commit him; but then he is to be allowed 8 d. per Pound for collecting, and 12 d. for the Fee of the Estreat. And any one Justice, on Complaint, may compel those who have been Constables, to pay the Arrears of Money by them levied on Estreats.

59. One Justice of Peace, upon his own View, or upon Conviction by the Oath of one Witness, may commit him who resists any Person employed to put the Acts concerning Highways in Execution, or of rescuing Goods distrained, until he pay 40 s. to the Surveyor, if he refuse to pay the same within seven Days after Notice of such Conviction. 22 Car. 2. c. 12.

60. In whose soever Ground or Side a Hedge shall be, to the Owner of that Land belongs the Keeping the same Hedge, and also the Ditch adjoining and belonging to it on the other Side, in Repair and scoured. The Soil of Highways publick or private belongs to him, on whose Land it is on each Side of it. *Berry v. Goodman*, 2 Leon. 148.

Five Justices at Quarter-Sessions have Power of enlarging Highways, &c.

61. By Stat. 8 & 9 W. 3. c. 15. five Justices at Quarter-Sessions have a Power of enlarging Highways not to take in above eight Yards in Breadth. No Power to pull down any House, or take away the Ground of any Garden, Orchard, Court, or Yard: Justices may impanel a Jury, who must take an Oath, that they will assess such Damages to the Person, &c.

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whose Ground is taken, as they shall think reasonable, not exceeding twenty-five Years Purchase; besides reasonable Recompence for a new Ditch and Fence to that Side of the Way, that shall be so enlarged; and also Satisfaction to any other Person injured by, &c. Five Justices may order one or more Assessments to be made on the Inhabitants of the Parish, who ought to repair the same; Money raised to be accounted for, and employed according to Justices Order, towards purchasing such Lands, &c. and enlarging Highways, &c. on Refusal of Payment in ten Days of aforesaid Rates, Overseer, by Justice's Order, may levy by Distress, &c. no Assessment to exceed 6 *d.* per Pound in one Year; Justices to give Notice to Owners of the Ground to appear at Sessions, and shew Cause why Ways should not be enlarged. Persons aggrieved may appeal to Judge of Assize at the next Assize only, who may affirm or reverse the same; and if they see Cause to affirm, to award Costs against the Appellant. And after an Order is made for the laying out of Ground for enlarging Highways, the Owner hath Liberty in eight Months after to cut down any Wood or Timber growing upon the said Ground; or upon Neglect, the Justices shall sell it, and deliver to the Owner the Value. Highways inclosed after a Writ of *ad quod damnum*, &c. Persons aggrieved by such Inclosure may appeal to the Quarter Sessions next after such Inquisition, who have a Power finally to determine such Appeal.

62. By Stat. 6 *Ann. c. 29.* no Cart or Carriages, except No Cart or Carriage to be drawn with above six Horses, &c.
for Husbandry, (manuring of Land, Hay, Straw, are excepted, and by 1 *G. 1. c. 11.* Corn, Coal, Chalk, Timber for Shipping, Materials for Building, Stones of all Sorts, or Ammunition, &c. for his Majesty's Service) shall be drawn with above six Horses, on Forfeiture of 5 *l.* to the amending the Ways, and the Informer; Penalty to be levied by Distress of all or any of the Horses, &c. by Warrant from one Justice; if not paid in three Days, to sell the same, rendering Overplus, Charges first deducted. Surveyor neglecting to put the Act in Execution, forfeits 5 *l.*

63. By Stat. 9 *Ann. c. 18.* 'tis enacted, That any Person The Method of seizing, &c.
may distrain or seize Horses, Oxen, or Beasts, drawing with more than six Horses against the Stat. 6 *Ann. c. 29.* and deliver them to the Surveyor or other Parish-Officer of the Place where the Offence shall be committed. And if the Penalty of 5 *l.* inflicted by that Act is not paid in three Days, the Surveyor or other Parish-Officer may by a Warrant of one Justice sell the Distress, and deliver the Money to the Justice, who must distribute it, one Moiety to the Surveyor, the other to the Prosecutor, as by that Act is directed.

64. The Person seizing, &c. but neglecting to bring the Cattle to the Surveyor or Parish-Officer, forfeits 20 *l.* to be levied

levied by Warrant of one Justice by Distress and Sale, &c. and for Want thereof to be sent to the Gaol till paid; one Moiety to the Repairs of the Highways, the other to the Informer; the Surveyor neglecting to deliver the Sum by him received to the Justice, forfeits 20*l.* to be levied as aforesaid.

65. Any Person employed by a Carrier, or another, and subject to the Penalties in that Act, and driving or assisting to drive any travelling Waggon or Cart with more than six Horses, &c. shall forfeit 5*l.* to be levied and disposed as aforesaid. And where six Horses, &c. are not sufficient to draw up Hill, or out of any foul Way, any Person may, by Consent of the Owner or Driver, &c. add more Horses, &c. from any other Cart or Waggon on the Road. 9 *Ann. c. 18.*

66. By Stat. 5 G. 1. c. 12. no Waggon travelling for Hire, shall be drawn with more than six Horses, either in Length or in Pairs, or Sideways; no Cart travelling for Hire shall be drawn with more than three Horses, on Forfeiture of all the Horses above six in the Waggon, with all the Furniture belonging to the said Horse or Horses, and all the Horses above three in the Cart, &c. by Owner or Driver, for the Use of the Person seizing the same, who must deliver such Horse or Horses to the Constable, or other Parish Officer of the same, next or adjacent Town where seized, who is to keep the same, till the Person making the Seizure hath made Proof upon Oath before any one Justice of the Offence committed, which said Justice shall issue his Precept to the Constable, &c. to deliver the Horse, &c. forfeited to the Party or Parties who seized the same, paying such reasonable Charge for keeping the same, as the said Justice shall allow.

How the
Wheels are to
be bound, &c.

67. No Waggon travelling for Hire, having the Wheels bound with Streaks, or the Tire of a less Breadth than two Inches and one Half, when worn, or being set or fastened on with Rose headed Nails, shall be drawn with more than three Horses, on Forfeiture of all the Horses above three by the Owner or Driver, together with their Furniture to be seized and recovered as aforesaid. Any Person by Force or otherwise hindering or endeavouring to hinder such Seizure, on Proof made of it by one Witness before one Justice, shall for the said Offence be committed to Gaol for three Months, without Bail or Mainprize, and shall forfeit 10*l.* to be levied by Distress by Warrant from the said Justice; if Money not paid in three Days, Sale, rendering Overplus to the Owner after Charges deducted: Not to extend to Carts and Waggon employed about Husbandry, manuring Land, carrying of Cheese, Butter, Hay, Straw, Corn unthreshed, Coals, Chalk, or any one Tree or Piece of Timber, or any Stone, or Block of Marble.

68. Caravans

68. Caravans for Artillery are excepted from the discontinuance against the

5 G. 1. c. 12.

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68. Caravans covered, Carriages of Noblemen and Gentlemen for their own private Use, or Timber, Ammunition or Artillery for his Majesty's Service, his Heirs and Successors, are excepted. If any Action commenced, and the Plaintiff discontinue his Suit, or be nonsuited, or Judgment given against him, the Defendant shall recover full Costs of Suit.

5 G. 1. c. 12.

69. By Stat. 6 G. 1. c. 6. no Person shall carry in the City of London and Westminster, or within ten Miles thereof, in Carts or Waggon having their Wheels bound with Iron, at any one Load more than seven hundred and a Half of Bricks, one Chalders of Coals, twelve Sacks of Meal of five Bushels to the Sack, and twelve Quarters of Malt, on Forfeiture of one of the Horses with the Gear, Furniture, &c. to any one who shall seize the same in such Manner as the Penalties are directed to be levied and applied, by the Stat. 5 G. 1. c. 12. relating to Carriages drawn on the Highways. Oath is to be made of the Offence before a Justice, who on Conviction is to order the Forfeiture to the Seizor, &c.

No Person to carry within ten Miles of London above seven hundred and a Half of Bricks, &c.

70. Persons who are bound to repair the Pavements before their own Houses at their own Costs, are also obliged to contribute to the Payment of their Scavengers Rates; for as to their paving before their own Doors they have the principal Benefit of it, and that is no Reason to excuse them from Parochial Duties. 5 Mod. 68. *Rex v. Inhab. Newington.* 1 Salk. 356.

71. Justices of Peace must particularly express what Days are appointed for working on the Highways, and not appoint six Days generally between such a Time and such a Time. On Indictment for not working towards Reparation of the Highways according to the Statute, setting forth that six Days *inter* such a Time and such a Time were limited, and the Defendant did not work upon any of the Days; the Indictment held naught, for the particular Days ought to be set forth. *Reg. v. Kime*, 1 Salk. 357. *Pasch. 2 Ann. B. R.*

72. If a Way be soundrous, and there be Outlets from the Land adjoining, the People may travel upon the Soil, though sown with Corn; and if a Way be through a Man's Lands, and he fences it in, he by that hath bound himself to repair the Highway, though the Parish did it before; but if he lay it open again, then he is no longer obliged to repair it. 1 Cro. 366. *Trin. 10 Car. Duncomb's Case*, *Roll's Abridgment* 390. *Saund.* 160.

If a Way be soundrous, People may travel on the Soil, though sown with Corn, &c.

73. *N. B.* It is not enough for Parishioners to work the full six Days yearly on the Highways, except that thereby the Ways are sufficiently repaired; for if they be not, the whole Town may be indicted; and a Highway lying out of any Parish, ought to be repaired by the whole County.

74. On

Cafe of an Information in the Crown-Office, &c.

Manor chargeable with Repairs of Highways continues so in whose Hands soever it is.

74. On an Information in the Crown-Office for not repairing an Highway, they say, one Part of the Parish ought; by the Chief Justice you may plead Not guilty, and give in Evidence that Part of the Parish that ought to repair.

75. If a Manor be held by the Service or Tenure of repairing a Common Highway or Bridge, and that Manor afterwards comes to be divided into several Hands, every one of the Alienees, being Tenants of any Parcel, either of the Demefnes or Services, shall be liable to the whole Charge, and are contributory among themselves. And though the Manor subject to such Charge comes to the Crown, yet the Duty upon it still continues, and all claiming under the Crown afterwards shall be liable to Indictment or Information for want of Repairs. *Salk.* 358.

76. It is not justifiable to stop one Way (which was bad) and lay out another (without Authority). 1 *Cro.* 266. *Pop.* 142. An Action for stopping or incroaching upon an Highway is not maintainable without particular Damage, and the usual Way is by Indictment.

77. If a Man be obliged to repair the Highway *ratione tenuræ* of certain Lands, although he lay those Lands open to the said Way, he continues still liable to repair it. *Trin.* 21 *Car.* 2. *Roll.* 406. 2 *Saund.* 160, 161.

78. An Indictment will not lie for a common private Way, but an Action on the Case. 2 *Vent.* 208. *N.B.* No Ways are properly under the Cognizance of the Surveyors of the Highways, unless they are common Highways.

79. He that hath a Plough-Land, though he hath no Plough, but doth suffer his Land to lie fresh, yet he is to find a Team for his Work; and so it hath been agreed by the Judges. *Mich.* 21 *Ja.* 1.

Distress for Rent can't be taken in the Highway, &c.

80. Distress for Rent-Service cannot legally be made in the Highway, by Stat. *Marlb.* c. 75. 3 *Cro.* 710. and where a Lord of a Manor distrains in the Highway, the Tenant may have an Action of Trespass, or make Rescous. 17 *Ed.* 3. c. 1. &c. and there can be no Prescription against a Statute. 9 *H.* 6. 56, &c.

Persons, &c. must work with Pick-axes, &c. eight Hours a Day, &c.

81. Persons and Carriages are to be provided with Shovels, Spades, Pick-axes, and other Tools and Instruments necessary, and shall work eight Hours in the Day. Stat. 22 *Car.* 2. c. 12. In Places where Carts are not used, the Inhabitants shall send Horses according to the Custom of the Place, with able Persons, under the like Penalties.

82. If a Man hath a Plough-Land in several Parishes, he shall be chargeable only in the Parish where he lives; but if he keep several Plough-Lands in several Parishes, he shall be chargeable in every Parish. 18 *El.* c. 10.

83. H. to attend 105.

84. I. obliged to any Land Plough- whether If the C but suffer he had c

85. A as it is c charge t of their bound t Time o

86. v Highway thereof, usually of the y ing paid streff. the fix be made

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87. A County in the in the l an Ord

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83. He who keeps a Draught and but two Horses, ought to attend therewith for Reparation of the Highways. *Dalt.*

105.

84. If a Man keeps several Draughts in a Parish, he is obliged to send a Team for each Draught, whether he occupy any Land in the Parish or not, and he who occupies several Plough-Lands ought in like Manner to send a Team for each, whether he keep any Draught or not. *Raym.* 186. 3 *Keb.* 567. If the Owner of Lands neither occupy them, nor let them, but suffer them to lie fresh, he shall be charged as much as if he had occupied them. *Palm.* 389.

If a Man keeps several Draughts, he must send a Team for each Draught, &c.

85. And where Defendants have made a Highway as good as it is capable of being made, it is said, this shall not discharge them on an Information, though it may be a Mitigation of their Fine. 3 *Salk.* 183. But the Defendants are not bound to put the Highway in better Repair than it has been Time out of Mind. *Reg. v. Clusworth,* 1 *Salk.* 358.

86. Where the Statute Work falls short in repairing of Highways, the Justices in their Quarter-Sessions being satisfied thereof, may cause Assessments to be made on every Person usually rateable to the Poor, not exceeding 6 *d.* in the Pound of the yearly Value of Lands, &c. which Assessments not being paid in ten Days after Demand, may be levied by Distress. *Stat.* 3 & 4 *W. & M. c.* 12. And notwithstanding the six Days Work have been performed, these Rates may be made. *Stat.* 1 *G. 1. c.* 52.

Where Statute Work falls short, Quarter-Sessions may cause Assessments to be made, &c.

Form of an Assessment for repairing of Highways.

87. **A**N Assessment made on the several Persons herein after-mentioned, Inhabitants of the Parish of, &c. in the County of, &c. for the repairing and amending of the Highways in the said Parish, the Year, &c. The same being Two-pence in the Pound for every Pound Rent by the Year, in Pursuance to an Order of Quarter-Sessions of the Peace held for the County of
made by _____ whose Names are hereunto
subscribed this _____ Day of _____ 1739.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
A. B. Esq;	0	7	0
C. D. Gent.	0	5	0
E. F. Yeoman.	0	5	0
G. H. &c.	0	6	0
J. K. &c.	0	4	0

We whose Names are hereunto subscribed, his Majesty's Justices of the Peace for the County of M. (one whereof being of the

the Quorum) do approve of, allow and confirm the foregoing Rate made for the Highways. Given under our Hands and Seals this, &c.

88. By Stat. 7 & 8 W. 3. c. 29. If the 6 d. in the Pound order'd by 3 & 4 W. & M. c. 12. be not sufficient to repair the Ways after the same is levied and employed, the Justices in their special Sessions held every four Months may order the whole Parish to make good the Repairs thereof.

Surveyors neglecting their Duty, forfeit 5 l.

89. By former Statutes the Penalty was forty Shillings for Neglects of Surveyors in putting the Laws in Execution for repairing the Highways; but by the Statute 5 Ann. c. 9. the Forfeiture is made five Pounds; and by 1 G. 1. c. 48. Surveyors misapplying Money are liable to the like Penalty of five Pounds. Justices neglecting or refusing to do what is required by the Stat. 3 & 4 W. & M. c. 12. for the Highway, shall forfeit 5 l.

90. In a Trial concerning Repairs of Highways, those who are chargeable to the Repairs shall not be admitted as Evidence; but a Person in the Parish no Way liable to such Reparations, is allowed to be a good Witness. *Term. Hill. 14 & 15 Car. 2.*

Persons keeping Coaches obliged to send a Wain towards Repairs of Highways.

91. It has been adjudged, that he who keeps a Draught and but two Horses, is obliged to give his Attendance with it for repairing of the Highways; and a Person keeping a Coach and a Pair of Horses, not a Team, is bound to send out a Wain towards the Repair of the Highways, a Coach and Horses doing as much Damage to the Ways as a Cart and Horses. *Dalt. 105. 1 Lew. Rep. 139.*

92. And it hath been resolved, that it is the Occupier and not the Owner of Land who is generally to be assessed for and chargeable with the Repairs of the Highways. But where there is no Occupier, and the Owner suffers the Lands to lie fresh, in such Case, he shall be charged as if he had occupied them. *2 Roll. Rep. 412.*

Unity of Possession doth not extinguish a Way thro' Land, &c.

93. There were three Parcels of Land, and the necessary private Way was out of the first Parcel to the second, and out of the first and second Parcels to the third Parcel, and J. S. purchaseth all the three Parcels, and afterwards aliens the two first Parcels to J. W. and whether this Unity of Possession in J. S. did not extinguish the Way, came in Question; and it was said, that if it were a Way of Necessity, and no other Way to the third Parcel which J. S. still kept, that then the Way doth still remain; for it is not only a private Inconvenience to J. S. but also a Prejudice to the Commonwealth, for Land to lie fresh and unoccupied; and so it was adjudged by the Court. *Parker and Westead's Case, 2 Sid. 39 M. and 112. Clark and Cogg's Case, Cro. Ja. 170.*

94. If *T.* have an antient Way over the Close of *H.* and *H.* sows the Close and Way, and leaves a Way in another Part of the Close; yet *T.* may justify to go where the antient Way is, and is not bound to go in the unplough'd Way. *Horn and Taylor's Case, Noy's Rep.* 128.

95. Tho' it is provided by the Statute of *Marlb. c. 15.* that no Distress shall be taken in the Highway, unless by the King's Officers having special Authority; yet this is intended only of Distresses for Rents and Services, and not for those Things whereof no Distress can be but in the Highway, as for Toll, &c. And in Case a Distress be taken for Rents and Services in the Highway, yet the Party distrained cannot plead it in Bar, but must bring his Action upon the Statute. *Smith and Shephard's Case, Cro. El.* 710. 8 Co. 60. 2 Inst. 131.

96. If the Lord comes to distrain, and sees the Cattle upon his Tenancy, and the Tenant, or any other, on Purpose to prevent the Distress, drives the Cattle out of the Ground into other Lands not holden of the Lord, or into the Highway, in this Case he may freshly follow and distrain them there, and is not punishable by this Statute; but in both these Cases the Lord when he comes to distrain, must have the View of the Cattle within his Fee; but see Stat. 11 G. 2. Lord may di-
strain Cattle
in Highway, if
driven out of
his Sight, &c.

97. Stewards in Court Leets have Power to inquire after the Offences aforesaid, committed within the Precincts of their Leets, and set reasonable Fines and Amercements upon Offenders, &c.

98. Every Person or Persons occupying a Plough-Land in Tillage or Pasture, which lies in several Parishes, is chargeable only in the Parish where he lives, in the same Manner as any Person is, having a Plough-Land all in one Parish; and he which keeps in his Hands or Possession several or divers Plough-Lands in several or divers Towns, shall be chargeable to find in each Town or Parish (where the Plough-Lands being in his Occupation do lie) one Cart, Wain, Sledd, Car or Dragg, furnished for the Amendment and Repair of the Highways, within the several Parishes where the said Plough-Lands do lie, as if he or they were a Parishioner dwelling there. How Persons
having Plough-
Lands in several
Parishes are
chargeable,
&c.

99. In *Michaelmas Term 27 Car. 2.* an Order was made by the Justices of Peace in *Middlesex*, for charging several Brewers and Bricklayers living there, and using several Draughts, to send so many as they kept, for the repairing of the Highways; and the Order being removed into the King's Bench, a *Procedendo* was awarded by the Lord Chief Justice *Hale*; and the whole Court were all strongly of Opinion, that so many Draughts as they kept, so many they ought to send, As many
Draughts as a
Man keeps, so
many he ought
to send out,
&c.
that

that so the Service they will do, will answer the Wrong and Damage by them occasion'd in the Highways.

100. He that keeps a Cart for Hire, and goes with one or two Horses, must send his Cart to the Amendment of the Highways, with so many Horses as he goes withal for Hire, to carry such Loads as they are able to draw.

The Soil of Highways belongs to the Lord of the Manor, &c.

101. The Lord of the Manor who hath the Land on both Sides of the Highway, shall have the Trees growing in the said Way; and so where the Highway is over the Lord's Waste; for the King hath but the free Passage for him and his People; but the Freehold and all the Profits are to the Lord of the Soil, as Trees, Grass, &c. and he may have an Action for the Trees taken away, or eating the Grass, or digging the Soil, &c. And tho' it be customary for Salters and Colliers to bait their Horses, and eat the Grass growing in the Highway, yet they are Trespassers in so doing. But he who hath the Land adjoining but to one Side of the Highway, shall not have the Trees growing even upon that Moiety of the Highway.

Justices at Quarter-Sessions to assess the Prices of Land-Carriage, &c.

102. By Stat. 3 & 4 W. & M. c. 12. 'Tis enacted, that the Justices of Peace within the Realm of England, or Dominion of Wales, at their respective Quarter or General Sessions after Easter yearly, are to assess and rate the Prices of all Land-Carriage whatsoever, of Goods to be brought into any Place within their respective Limits and Jurisdictions by any common Waggoner or Carrier, and to certify the said Rates to the several Mayors, and other chief Officers of each respective Market Town, within their said Limits and Jurisdiction, to be hung up in some publick Place in every such Market-Town; and no common Waggoner or Carrier is to take above such Prices so set, on Pain to forfeit for every Offence 5 *l.* to be levied by Distress, by Warrant of any two Justices of Peace where such Waggoner or Carrier shall reside.

103. If any common or private Way that leads from a Village, &c. to the Parish Church or Fields without any Communication with a great Road, be ruinous and out of Repair, every Inhabitant has a Right to bring an Action. 1 Vent. 208.

104. Actions for any Thing done by Means of the Act 22 Car. 2. c. 12. or 3 & 4 W. & M. c. 12. are to be laid in the proper County, and the Defendant may plead the General Issue; and if there be a Verdict for the Defendant, or the Plaintiff become nonsuited, &c. the Defendant shall have treble Costs.

'Tis not the Inquisition and Return on a Quoddamnum, but the Licence

105. Without Licence to inclose an old Way, though on *Ad quod damnum*, the Inquisition find that such Inclosure would injure

of the Crown grounded thereupon, which gives a Right to Inclosure, &c.

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injure none, and is so returned; yet none can lawfully inclose, for if he did he would be guilty of a Nuisance; for it is not the Inquisition and Return that gives any Right to inclose; but the Licence of the Crown grounded thereupon; and after the Inquisition it is in the Election of the King or Queen, to let the old Way stand or not. The Person grieved by the Inclosure is to bring his Appeal the next Sessions after Inquisition found. And no Inclosure can be made by Virtue of Inquisition, according to the *Ad quod damnum*, without Licence, unless by Virtue of an Act of Parliament. Case of the *Queen ver. Ogden*. An Order was confirmed at the Quarter-Sessions for the County of *Dorset*, made by two Justices of the Peace of the said County, founded on the Clause 8 & 9 *W. 3. cap. 16.* for enlarging the Highways. There was an *Ad quod damnum* sued out, and an *Ad nullius damnum* returned, and an Order thereupon made for inclosing such an antient Highway, and setting out Ground for another in such a Place, and an Appeal from this Order to the Sessions, where the Inclosure was declared a Nuisance to the whole Country. *Mod. Cases* 45, 46, &c.

106. By Stat. 3 & 4 *W. & M. c. 12.* none shall be punished for any Offence against that Act, unless he be prosecuted within six Months after the Offence committed.

107. It hath been resolved, that an Indictment against a Man for stopping of an Highway in his own Lands is good, without laying the Offence done *vi & armis*. *Poph.* 296.

108. Whoever is indicted, or presented at any Court, except a Court-Leet for any Offence relating to the Highways, (unless it be by Presentment of a Justice of Peace) may traverse the whole Matter alledged against him in such Indictment or Presentment; but he who is presented for such Offence in a Court-Leet, can only traverse it so far as it concerns his Freehold, as by charging him with being bound to such Repairs, in Respect of the Tenure of his Lands, &c. for which Purpose he may remove it by *Certiorari* into the King's Bench, there traverse the same. *Dyer* 14.

They who are presented in a Court-Leet, may traverse it only so far as it concerns his Freehold, &c.

Statutes which concern Highways and Bridges in particular Places.

109. **B**ATH. 12 G. 2. *cb.* 20.
Bedford. 5, 8, 9 & 12 *Ann.* 3, 6, 9, 11, 13 G. 1.
 1 & 5 G. 2. 9 G. 2. *cb.* 9. 10 G. 2. *cb.* 24. 13 G. 2.
cb. 9.
Berks. 12 *Ann.* 4 & 12 G. 1. 1, 3 & 6 G. 2. 9 G. 2.
cb. 16, 21. 12 G. 2. *cb.* 11.
Bristol. 13 G. 1. 4 G. 2.

Bucks.

- Bucks. 7, 9, 13 G. 1. 1 G. 2. 9 G. 2. *ch.* 11. 13 G. 2. *ch.* 9.
- Cambridge. 35 Hen. 8. 15 Car. 2. 4 & 5 W. & M. 10, 11, 13 G. 1. 3 G. 2.
- Cardiffe. 23 & 39 Eliz.
- Chepstow. 3 Jac. 1.
- Chester. 37 Hen. 8. 4 & 5 Ann. 4 & 5 G. 2. 14 G. 2. *ch.* 31.
- Chichester. 18 Eliz.
- Cumberland. 43 Eliz. 11 G. 1.
- Derby. 11 G. 1. 3 G. 2. 11 G. 2. *ch.* 33. 12 G. 2. *ch.* 12.
- Dorset. 1 Mar.
- Ely. 14 G. 2. *ch.* 14.
- Effex. 7 & 8 W. 3. 1 Ann. 8, 10, 12 G. 1. 3 G. 2. 10 G. 2. *ch.* 36.
- Gloucester. 9, 10, 12 W. 3. 9, 11, 12, 13 G. 1. 3, 4 G. 2. 12 G. 2. *ch.* 11.
- Hereford. 19 Eliz. 7, 12, 13 G. 1. 2, 3, 6 G. 2.
- Hertford. 15, 16 & 17 Car. 2. 2, 4 & 5 W. & M. 5, 10 Ann. 7, 9, 11, 12, 13 G. 1. 3 G. 2. 7 G. 2. *ch.* 29. 8 G. 2. *ch.* 9. 10 G. 2. *ch.* 12, 24. 11 G. 2. *ch.* 10. 14 G. 2. *ch.* 13.
- Huntington. 4 & 5 W. & M. 9, 12 Ann. 11, 13 G. 1. 1 G. 2. 7 G. 2. *ch.* 29. 9 G. 2. *ch.* 9. 14 G. 2. *ch.* 13, 14.
- Ipswich. 13 Eliz.
- Kent. 15, 26 Hen. 8. 27, 39 Eliz. 8, 11 Ann. 6, 10, 11 G. 1. 3 G. 2. 9 G. 2. *ch.* 7. 10 G. 2. *ch.* 23. 11 G. 2. *ch.* 36, 37. 14 G. 2. 12.
- Lancaster. 11, 12, 13 G. 1. 1, 3, 4, 5 G. 2. 8 G. 2. *ch.* 3, 7.
- Leicester. 8, 12 G. 1. 11 G. 2. *ch.* 3, 33. 12 G. 2. *ch.* 35.
- Lincoln. 12 G. 1. 12 G. 2. *ch.* 8. 10, 14 G. 2. *ch.* 15.
- London. 24, 25, 32, 34 Hen. 8. 13, 23 Eliz. 19, 22, 23 Car. 2. 3 & 4 W. & M. 5 Ann. 1 G. 2.
- Middlesex. 10, 11, 12 Ann. 1, 3, 7, 8, 10, 11, 12, 13 G. 1. 1, 2, 3, 4, 6 G. 2. 7 G. 2. *ch.* 26. 8 G. 2. *ch.* 8. 9 & 28. 9 G. 2. *ch.* 39. 11 G. 2. *ch.* 6 & 29. 12 G. 2. *ch.* 16. 14 G. 2. *ch.* 16.
- Newport. 3, 39 Eliz.
- Norfolk. 27 Eliz. 7 & 8 W. 3. 7, 10 Ann. 12 G. 1.
- Northampton. 8 Ann. 8, 9, 11 G. 1. 10 G. 2. *ch.* 11. 12 G. 2. *ch.* 18, 35. 13 G. 2. *ch.* 5.
- Nottingham. 12 G. 1. 11 G. 2. *ch.* 3. 12 G. 2. *ch.* 12, 14.
- Oxford. 18 Eliz. 5 G. 1. 3, 4 G. 2. 9 G. 2. *ch.* 11, 14. 13 G. 2. *ch.* 15.

Rochester

Chap. 59.

Rochester.

Salop.

Somerset.

Southampton.

ch. 16.

Stafford.

ch. 5.

Suffolk.

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Recheſter-Bridge. 18, 27 *Eliz.*

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Somerſet. 1 Mar. 6 Ann. 7 G. 1. 3 G. 2.

Southampton. 9 Ann. 12, 13 G. 1. 2 G. 2. 9 G. 2.

ch. 16. 10 G. 2. *ch. 12.*

Stafford. 12 Ann. 4, 12, 13 G. 1. 2 G. 2. 8 G. 2.

ch. 5.

Suffolk. 10 Ann. 12 G. 1. 6 G. 2.

Surrey. 39 *El.* 8, 9, 10 *W.* 3. 4, 6, 10 G. 1. 1, 4 G. 2. 10 G. 2. *ch. 23.* 11 G. 2. *ch. 36.* 12 G. 2. *ch. 16.*

13 G. 2. *ch. 25.*

Suffex. 15, 26 *Hen.* 8. 39 *El.* 4, 6, 10 G. 1. 4 G. 2. 10 G. 2. *ch. 23.* 14 G. 2. *ch. 12.*

Warwick. 10, 11, 12, 13 G. 1. 3 G. 2. 12 G. 2. *ch. 18.* 13 G. 2. *ch. 5, 22.*

Wills. 5, 12 Ann. 4, 11, 12, 13 G. 1. 2 G. 2. 9 G. 2. *ch. 16.* 10 G. 2. *ch. 6.* 14 G. 2. *ch. 29.*

Worceſter. 12 Ann. 12, 13 G. 1. 1 G. 2. 10 G. 2. *ch. 5.*

York. 11, 12, 13 G. 1. 8 G. 2. *ch. 3, 7.* 14 G. 2. *ch. 19, 23, 25, 28, 31, 32.*

110. In moſt of theſe Acts there is a Clause which im-
powers two Juſtices at Petty or Special Sessions, to determine how
much of the Statute Work of each Pariſh ſhall be done in the
Road mentioned in the Act: And another Clause which enables
the Trustees, or a *Quorum* of them, to compound with any
of the Pariſhes to which the ſaid Roads belong, or with Poſ-
ſeſſors of ſuch Lands as are chargeable, for a Sum of Money,
or otherwiſe, by the Year, in Lieu of the Statute or other
Work.

111. As to Indiſtments about Highways, they are either,

1. For obſtructing or ſtopping a Way, or
2. For not repairing.
3. For Nuſance, or,
4. For not working on them.

112. An Indiſtment for ſtopping the King's Highway in
Kenſington, good, without ſaying from ſuch a Place to ſuch a
Place, otherwiſe of a common Way. *Noy* 90. 2 *Saund.* 157.
An Indiſtment for ſtopping a Way to a Church without ſay-
ing *communis via*, good. *Poph.* 206. 2 *Saund.* 157. *Latch*
15. An Indiſtment againſt a Lord of a Manor ſtopping of
an Highway in his own Lands, is good, without laying the
Offence done *vi & armis*. *Poph.* 206. For ſtopping *quan-*
dam partem Aquæ it was quaſhed; for it ſhould have been *ter-*
ram

A Man was indicted for stopping communem viam pedestrem ad Ecclesiam de L. and it was held that if the Way had been alledged to be pro Parochianis, it had made the Indictment ill; for then the Nuisance would extend no farther than the Parish, and every Parishioner might have an Action; but it was laid ad commune nocumentum; and in such Case, the Church shall be only intended the *Terminus ad quem*. 2 Co. 524. 1 Vent. 233.

113. Where the Defendant pleaded, that he had laid out a more commodious Way, and that before it was done he brought a Writ of *Ad quod damnum*, &c. viz. Whether it should be a Damage if the King should give a Licence to stop up the Way? And upon the Inquisition taken, it was found that 'twas no Damage. This was held no good Plea, because he did not plead that he had obtained the King's Licence, neither did he set forth by what Authority he laid out the Way; for it is but at his Pleasure, and he might stop it when he would. Cro. 296.

When a Presentment for diverting a Way is void.

114. An Indictment for stopping *quandam partem viae regiae apud G.* is not good, without alledging how much in Breadth and Length, Roll. Abr. 2 Part, 81. but you must not say *per estimationem*; for that is uncertain. The Word (divert) not being a Term proper and applicable to a Way, which may be obstructed, but cannot be diverted; therefore a Presentment in a Leet for diverting a Way is void. An Indictment for stopping a Way *valde necessariam* for the Subjects, quashed; because it did not alledge it to be *regiam viam*. 4 Leon. 121. The like for alledging it to be *ad nocumentum diverforum*, &c. it should be of all the People. Cro. El. 148. 1 Vent. 4. The Information was for stopping, and the Evidence was that he ploughed it; and it was held good.

Ploughing up held to be stopping a Way.

When on Not Guilty, the Decay only comes in Question.

115. Upon Not Guilty pleaded, the Decay only comes in Question; for if another Person ought to repair, he shall be acquitted, though no Judgment can be given upon such a Verdict. Sid. 140. A Prescription to repair *ratione tenuræ* is not good; because it ought to be by Custom, which is local, viz. that in such a Place there has been a Custom Time out of Mind, &c. to repair. Sid. 464. Style 400. Where a Man is indicted for not repairing *ratione tenuræ*, omitting the Word *sue*, 'tis well enough; for the Forms are both Ways, and in the latter Indictments, the Word *sue* is often left out. Latib. 205. 1 Vent. 331.

What is a Highway.

116. Though the King should have granted before 2 & 3 Ph. & Mar. cap. 8. that Lands shall be exempted from repairing, &c. yet that is not a good Discharge for the Lands. 3 Mod. 96. A Highway is that which leads from one Market-Town to another, and is to be repaired of common Right, by

by the Parish bound by P generally. Defendant be acquitted and the Re bound to never allow another or they would 1 Vent. 25 117. A Town to t Way, and sometimes pair, every will not cannot be Style 163.

118. Il pairing a is not eno finitum, brings a C mit to a I do; beca swered by Constat to Raym. 21 several M un-repair one ough might be out Certi 15 Gar.

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by the Parish where the Decay is, unless some other Person is bound by Prescription or Custom; and therefore *reparare debet*, generally, without shewing how, is not good. But if the Defendant pleads *reparare non debet*, and 'tis so found, he shall be acquitted, though it doth not appear who should repair; and the Reason may be, because *de communi jure* the Parish is bound to repair their own Highways, and therefore they are never allowed to plead Not Guilty, and give in Evidence that another ought to repair by Prescription or Tenure; for if they would discharge themselves they must plead it. *Sid.* 140. *1 Vent.* 256.

117. A common Way is that which leads from a Village or Town to the Parish Church or Fields; 'tis also called a private Way, and is to be repaired by the Village or Hamlet, and sometimes by a private Person; if such a Way be out of Repair, every Inhabitant may have an Action, but an Indictment will not lie. *1 Vent.* 208. But a Hamlet within a Parish cannot be charged generally to repair without Prescription, &c. *Style* 163.

118. If the Inhabitants of a Parish are indicted for not repairing a Way, and they submit to a Fine, and pay it; this is not enough, for Writs of *Disfringas* shall be awarded *in infinitum*, 'till 'tis repaired. If the Defendant, before Verdict, brings a Certificate that the Way is repaired, then he may submit to a Fine; but after a Verdict, such a Certificate will not do; because the Conviction being upon Record, must be answered by Matter of as high a Nature, and that must be a *Constat* to the Sheriff, who may return that 'tis amended. *Raym.* 215. Many Indictments were exhibited severally against several Men; because each by himself suffered his Door to be un-repaired; and it was shewed in the Indictments that every one ought to repair; and thereupon it was moved, that they might be quashed; but the Court would not quash them without Certificate, that the Parties had repaired the Doors. *Trin.* 15 *Car.* 1. *March's Rep.* 43. *Pl.* 71. See *Style* 364. p. 159.

119. Of common Right, all the Country ought to repair the Highway (except where some are particularly bound to repair it) because the Country have their Ease and Passage by it. *Co Rep.* 13. p. 33. *Passh.* 7 *Jac.* 1.

120. An Indictment against the Inhabitants of *Shoreditch* and *Hackney* in *Middlesex* for not repairing the Highways, was quashed; because the Parishes were jointly indicted, which ought to have been several. *Style's Reports* 157. An Indictment against the Inhabitants of *Mile-end* within the Parish of *Stebonheath*, alias *Stepney*, for not repairing the Highway, was quashed; because *Mile-end* is but a Hamlet within a Parish, which cannot be charged to repair a Highway, except it be by Prescription, or for some other special Reason; but the

Paying a Fine is not enough, unless the Way is repaired.

Two Parishes not to be indicted jointly.

An Indictment must set forth from what Place to what Place.

whole Parish or Village is to be charged. *Style's Rep.* 163. An Indictment for not repairing a Highway was quashed; because it did not set forth from what Place to what Place it did lead, *Style's Reports* 356. though it hath been held otherwise in *Halfet's Case*, *Mich. 2 Car. 1.* *Noy's Reports*, p. 90. An Indictment against Sir *Richard Lucy* for not repairing a Highway, was quashed; because it was not shewed of what Place he was an Inhabitant. *Noy's Reports* 87. *Benloe's Reports* 198.

Where one is obliged to repair the whole Way, and where but Half of it.

121. Where one was presented at Sessions for not repairing a Highway, which he ought to repair in Respect of his holding certain Lands, Parcel of the Way unrepaired; and also which Lands he had inclosed and incroached; on Removal into *B. R.* the Court were of Opinion that he ought to have been charged, either by Reason of his holding the Land singly, or by his incroaching singly; and *Kelynge*, Chief Justice, said, that though by incroaching upon the Highway he became liable to repair it as long as the Incroachment continued; but so soon as he lays the Land open again to the Way, he shall be discharged from the Repair of it; but where a Man is obliged to repair a Highway in Respect of his holding any Lands, although he leave those Lands open to the Way, yet he is obliged to repair the Way. *Trin. 22 Car. 2.* *B. R. Saund.* 260. *Sir Nicholas Stoughton's Case*. The same is in *1 Sid.* 464. where *C. J.* said, none denying it, that if one inclose Land of one Side the Highway, which was anciently inclosed of the other Side, he who made the new Inclosure shall repair all the Way; but if there had not been an ancient Inclosure of the other Side, he should have repaired but Half the Way; but if one make a new Inclosure of both Sides the Way, there he shall repair all the Way, agreeable to *Sir Edward Duncumb's Case*. *Trin. 10 Car. 1.* *Cro. Car.* 366. Chief Justice *Hale* said in *Austin's Case*, *Hil. 23 & 24 Car. 2.* that if there be no special Matter to fix the Repair of the Highways upon others, the Parish where the Highway is, ought to repair it of common Right. *Vent. Reports* 183 & 289.

122. See the Form of a Conviction for Highways upon the View of a Justice of Peace. *Keyling's Reports* 33, 34. An Indictment against *S.* for not repairing the Highway, the Way laid to be the King's Highway, or the common Street, quashed; because it was not laid for all the King's liege People. *B. R. Hil. 9 W. 3.* *The King v. Saunders.* *Co. Lit.* 56. *Cro. El.* 63.

Indictment must conclude ad commune nocumentum.

123. An Indictment for a Nuisance in a Horseway, was quashed; because it ought to have been the Queen's Highway, or the Highway. *Mich. 29 El. B. R. Cro. Eliz.* 63. *Co. Litt.* 56. a. The Indictment must conclude *ad commune nocumentum ligearum*, &c. if 'tis restrained by the Words *prope inhabitantium*,

Chap. 59.

inhabitantibus. 26. Upon this the Plaintiff made oath that he had

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inhabitantium, it will be quashed. 1 *Roll. Rep.* 406. 1 *Vent.*

26. Upon an Indictment for a Nuisance, the Court never admits the Person to a small Fine, 'till 'tis removed, and Affidavit made thereof, or else certified by two Justices; neither ought the Defendant to take any Exceptions to the Indictment, 'till he hath pleaded to it.

124. 'Tis a Nuisance to erect a Gate cross a Highway; What is a Nuisance in a Highway. though the Gate is easy to be opened, any Man may break it or cut it. *Cro. Car.* 185. *Cro. Car.* 133. *Jones's Reports* 221. *Jones and Harwood.* So 'tis to erect a Dam on his own Land, and Part of it on another Man's Land; and therefore the other Person may pull his Part down, though the Owner's Part fall. In Indictments for Nusances, the Place in which the Nuisance complained of was done, is to be expressed. On an Indictment, the Defendant must produce a Certificate that the Nuisance is removed, before he can take Exceptions to it; but a Presentment in such a Case, may be quashed without a Certificate, &c. An Indictment for putting a Laystall next a Highway, not good, without shewing from and to what Place the Way leadeth. 2 *Roll. Abr.* 81.

125. In *Easter Term* 20 *Car.* 2. in an Indictment, Notice was alledged *Die Dominica post Festum*, &c. and did not say *proxima*, which ought to be, by the Statute 2 & 3 *Ph. & Ma.* cap. 8. for which Reason it was quashed. If a Man hath eight Plough-Lands, though 'tis all Pasture, he ought to find eight Teams by six Days. *Raym.* 286. The Indictment was, that the Defendant *habens tantam Terram* did not work; and it was objected, that the Defendant might have Lands, and not use them himself; and this was held to be material; for in this Case, the Statute charges the Occupier with working on Highways. Statute charges the Occupier with working on Highways.

126. There are several Statutes for erecting Turnpikes, whereby Authority is given to Justices of Peace and Trustees, to appoint special Surveyors of the Highways, to amend the same, and Collectors of Toll, so much for every Horse, &c. Turnpikes. and so much for every Coach, &c. accounting to the Justices, &c. And all Persons chargeable towards the Repairs of the Highways shall remain so notwithstanding. In most of the Acts for setting up these Turnpikes, there is a Clause, that if any Person shall drive any Horse, Sheep, or other Cattle, through any Grounds adjoining to the Ways, whereby the Toll shall be avoided, being convicted thereof on Oath before one or more Justices of the Peace for the County, he shall forfeit 10 s. leviabie by Distress.

127. By an Act made 1 *G.* 2. c. 19. if any Person, either by Day or Night, wilfully and maliciously break down, or breaking down otherwise destroy any Turnpike Gate, or any Posts or Rails, Turnpikes, by Walls, or other Fences erected to prevent Passengers from passing by without paying Toll, he shall, being lawfully convicted

victed thereof, on Oath of one or more Witnesses, before any two Justices of the Place, or before the Justices in open Sessions, be sent to the common Gaol or House of Correction, to be kept to hard Labour for three Months without Bail, and the Justices shall order that the Offender shall be, by the Master of the Gaol or House of Correction, on the first Market-Day, once publickly whipped in such City, Town, &c. near which the Offence shall be committed, between the Hours of Eleven and Two.

128. If any Person commit the said Offences a second Time, or wilfully and maliciously break down any Lock, Sluice or Flood gate erected by Authority of Parliament for preserving the Navigation of any River, and shall be lawfully convicted of the same, upon Indictment before his Majesty's Justices of the Assize for the County, where the Offence shall be committed, he shall be adjudged to be a Felon, and shall be transported for seven Years.

129. If any Action be brought against any Person for any Thing done in Pursuance of this Act, the Action shall be commenced within six Months after the Fact committed, and shall be laid in such County where the Cause of Action shall arise, and the Defendant may plead the General Issue, and give this Act, and the Special Matter in Evidence, and on a Verdict, &c. shall recover treble Costs.

130. This Act shall be publickly read at every Quarter-Sessions, and at every Leet or Law-Day during the Continuance thereof, and shall be in Force for the Term of five Years, and from thence to the End of the then next Session of Parliament, and no longer.

Penalty by
5 G. 2.

131. But now by a Statute made 5 G. 2. 'tis enacted, that if any Person or Persons whatsoever, shall either by Day or Night, wilfully and maliciously break down, cut down, pull up, throw down, level, or otherwise destroy any Turnpike Gate, or any Post, Rail, Wall, or other Fence belonging to any such Turnpike Gate erected, or to be erected, to prevent Passengers from passing by without paying the Toll, directed to be paid by any Act of Parliament already made, or hereafter to be made for that Purpose; and shall be lawfully convicted of the same, upon Indictment before any of his Majesty's Justices of Assize, Oyer and Terminer, and General Gaol-delivery for the County, City, Town, Borough or Corporation where such Offence shall be committed, every Person so offending, and thereof lawfully convicted, shall be adjudged guilty of Felony, and the Courts, before whom such Felon shall be tried, shall have Power and Authority to transport such Felon for seven Years, as other Felons are directed to be transported. And if they return before the Expiration of the said seven Years, contrary to the Meaning of this Act, or of the Act

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passed in the first Year of *George 2. c. 19.* they so returning shall suffer Death as Felons without Benefit of Clergy. By Stat. 8 *G. 2. c. 20.* destroying Turnpikes is Felony without Clergy, in Force for five Years.

132. And if the Commissioners and Trustees, appointed to put any Act of Parliament for the Repair of any Highway in Execution, shall cause to be erected or continued any Gate or Turnpike, where they have not Power by any Act of Parliament to erect such Gate or Turnpike, it shall be lawful for the Justices of the Peace for the County, where any such Gate or Turnpike are, or shall be erected or continued, in their General Quarter-Sessions assembled, upon Complaint of any such Abuse or Excess of Power in such Commissioners or Trustees, in a summary Way to hear and determine the same; and thereupon to order the Sheriff of the County, (who is thereby authorized and required to execute such Order) to remove any such Gate or Gates, Turnpike or Turnpikes. This Act, and also the said Act of 1 *Geo. 2. c. 19.* shall continue and be in full Force for five Years from the 24th of June 1732. and from thence to the End of the then next Sessions of Parliament, and no longer.

133. By Stat. 7 *G. 2. c. 9.* Surveyors of Highways, who find any common Highway deep and foundrous, and the Hedge adjoining thereto to be so high, as thereby to prevent the Benefit and Advantage which such Highway would otherwise receive from the Sun and Winds, are to present to Justices at Special Sessions: Who, or any two of them, are by Warrant under Hands and Seals to summon the Occupier, whose Hedge is presented, to appear at the next Meeting, in or near the Division, to shew Cause why such Hedge should not be new made or cut low; and on Non-appearance of him, or some for him, or on due Proof on Oath (*ut supra*) the Justices, or two of them, are to issue a Precept to the Surveyors, directing them to leave Notice in Writing at the Place of Abode of the Occupier, that he is required to new make or cut low the said Hedge, within thirty Days after Notice (Notice to be between the last of *September* and first of *February*); and on Neglect or Refusal, the Surveyors are to do it: So that the Hedge be three Feet high above the Bank. And the Person neglecting, &c. to repay the Expences, and on Neglect or Refusal to pay within 14 Days, to be levied by Warrant of two Justices upon Complaint at their publick Meeting.

134. By Stat. 18 *G. 2. c. 33.* a Clause of 3 & 4 *W. & M.* enacting, that 'Inhabitants within the weekly Bills, who dwell off the Pavement, and Brewers and Scavengers, may make Use of Carts, &c. with Wheels shod with Iron, and narrower than six Inches in the Fellies, and drawn with more than two Horses', is repealed. This Act recites

2 *W. & M.* for drawing in *London* with two Horses only, and gives Liberty to draw with Horses, and for drawing with more than three Horses inflicts the Penalties by 2 *W. & M.* given for drawing with more than two. This Act also recites the Misbehaviour of Carmen, &c. and enacts, that after the 29th of September 1745. no Person shall drive Cart, &c. unless the Master place, upon some conspicuous Part, his Name, and the Number of the Cart, and he is to enter his Name and Place of Abode with the Commissioners for Hackney Coaches, for which he is to pay 1*s.* Penalty of driving without marking, &c. is 40*s.* and any Person may seize and detain the Cart, &c. or any of the Horses, till Penalty paid. Cart-wheels six Inches broad when worn may be bound with Iron six Inches broad, and flat and not set on with rose-headed Nails.

C H A P. LIX.

Of Scavengers.

1. **T**HOUGH there have formerly been several Acts of Parliament for the paving several Streets in *London* and the Outparts, as particularly in the 24, 25, 32, 34 & 35 *Hen. 8.* 13 & 23 *Eliz.* yet I do not find any Statute for Cleaning or Lighting the Streets of *London* or *Westminster*, before the Restoration of King *Charles II.* but in the 13 & 14 Year of his Reign an Act passed, empowering the King to nominate Commissioners to survey, order and manage the Highways, Streets, &c. of *London* and *Westminster*, and other Places within the Bills of Mortality; but this Act is expired.

Account of several Acts about Scavengers.

2. The Year after the Fire of *London*, being the 19th Year of that King's Reign, another Statute was made, serving chiefly for vesting the sole Power of paving, cleaning and lighting the Streets, &c. within the City of *London* and Liberties thereof, in Commissioners.

3. The Statute of 22 & 23 *Car. 2. cap. 17.* confirms and makes perpetual that of the 19th of the said King, which was only temporary before, and settles the Power of the Commissioners, and gives them Power of raising Money and laying Taxes, &c. within the City of *London* and Liberties thereof. And this was all that was done in this Affair, till the second Year of *William* and *Mary*, when an Act passed, which is the Basis or Ground-work on which the Law, in a great Measure, now stands in this Matter; though there has since passed another Statute relating to this Affair in the 8 &

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9 *Wil. 3.* and another in the 1 *Geo. 1.* but that of the 2d of *William and Mary* is the most particular.

4. By this Statute, two Tradesmen are to be chosen Scavengers on *Monday* and *Tuesday* in *Easter Week*, yearly, in cap. 2. every Parish within the weekly Bills of Mortality, by the Constables, Churchwardens, &c. and other Inhabitants, who must take upon them the Office in seven Days after Election and Notice, under the Penalty of 10 *l.* to be levied by Distress, by Virtue of a Warrant from one Justice, and for Want of a Distress, the Offender is to be committed; the Penalty is to be employed in repairing the Highways and Streets in the same Parish. 2 *W. & M. cap. 2.*

5. Scavengers every Day, except *Sundays* or *Holydays*, are to bring their Carts into the Streets, and give Notice by a Bell or otherwise, of carrying away Dirt, and to stay a convenient Time, or shall forfeit 2 *l.* Scavengers to bring their Cart every Day, &c.

6. The Inhabitants in *London, Westminster, Kensington, Southwark*, and within the Bills of Mortality, are to sweep their Streets every *Wednesday* and *Saturday*, or they forfeit for every Neglect three Shillings and Four-pence; this is increased to ten Shillings by Statute 8 & 9 *W. 3. cap. 37.* Inhabitants to sweep *Wednesdays* and *Saturdays* before their Doors, &c.

7. Persons laying Dirt, &c. in the Streets before their Houses, are liable to 5 *s.* Penalty; and laying Ashes, Dirt, &c. before the Houses and Walls of others, or before Church-Walls, or throwing any noisome Things in the common Sewer, Highway, or private Vault, forfeit 1 *l.* And hooping or cleansing Vessels in Streets, Lanes, &c. mending Coaches or sawing Timber or Stones, throwing Dung, Soil, &c. likewise incur a Forfeiture of 1 *l.* But Justices, in their Petit Sessions, may give Scavengers Liberty to lodge their Dirt in vacant Places near the Streets, satisfying the Owners for the Damage; and if the Demands of the Owners are unreasonable, the Justices have a Power to moderate the Price. Sessions may give Scavengers Leave to lay their Dirt, &c.

8. Inhabitants of Houses are to keep the Streets, Lanes and Alleys before their Doors paved to the Middle of the Highway, or shall forfeit for every Perch or Rod 1 *l.* and if not amended, 20 *s.* a Week till done. Owners of Houses unoccupied are liable to the like Penalties. No Swine shall be kept in Backsides, &c. of paved Streets, on Pain of Forfeiture. And an Indictment will lie for keeping Hogs in the back Streets in Town, at the Common Law; although by *Stat. 2 W. & M. sess. 2. c. 8. sec. 20.* there is a particular Penalty appointed for this Offence. *Regina v. Wigg, 2 Ld. Raym. 1163.* Inhabitants to keep their Doors paved, &c.

9. One Justice may certify to the Sessions what new Ways are fit to be paved, and Owners and Inhabitants of Houses new built, not paving or amending the Ground before their Houses, forfeit 2 *l.* for every Perch or Rod, and the like per Week. One Justice may certify what new Ways are fit to be paved.

Week for delaying. But when paved, they are only subject to the same Penalty as others.

10. Justices of *Middlesex* may, at the Quarter-Sessions, make Rates for paving *Kensington*, &c. Persons aggrieved by a Tax, &c. or Determination of any Justices, &c. may appeal to the Sessions, whose Order is final.

Sessions may order an Assessment, &c.

11. The Justices in Sessions may order an Assessment to be made, not exceeding 4 *d.* per Pound for Lands, and 8 *d.* for every 20 *l.* Personal Estate every Year, and Constables, Churchwardens, &c. may make a Tax, being allowed by two Justices to be collected quarterly, and to be levied by Distress and Sale, &c. if not paid within 14 Days.

Sessions may order the paving of Market-Towns, &c.

12. By the Stat. 1 *Geo.* 1. c. 48. and 9 *Geo.* 2. c. 18. the Quarter-Sessions may appoint Scavengers, and order the Repairing and Cleansing the Streets in any City or Market-Town, and appoint Persons to make Assessments on all Owners and Occupiers of Lands and Houses equally, not exceeding Six-pence per Pound per Annum, to defray the Charges of such Scavengers, which may be collected by such as the Justices shall think fit, and levied in eight Days by Distress, &c.

13. The Assessments for Scavengers of the Parish of *St. Anne Westminster*, and *St. James*, shall be rated according to the Custom of that City.

Antient Streets of London to be maintained according to Custom, &c.

14. Antient Streets of *London* are to be maintained according to Custom, and cleansing of Streets, &c. must be managed according to the antient Usage of the City of *London*. The Lord Mayor or any Alderman may present upon View any Offence within the City and Liberties thereof, and assess Fines not exceeding twenty Shillings for every Offence, to be paid to the Chamberlain for the Use of the City.

When Scavengers are to account.

15. Scavengers, when new ones are chosen, must account in 28 Days before two Justices of Peace for the Monies assessed and collected, and what remains in their Hands must be paid to the new Officers; refusing to account they shall be committed till they do, and till Payment is made. And the Penalties

How Penalties are to be recovered, &c.

supra are recoverable by Distress, by Warrant from a Justice, &c. to the Constable; and if the Offender is convicted by View of the Justice, one Half of them goes to the Poor, and the other to the Repair of the Ways; but if by Evidence, the Penalties are distributed between the Poor and Prosecutor.

A Warrant by two Justices to levy the Money for Scavengers, &c.

To the Constables, Headboroughs, and Scavengers of the Parish of _____ in the said County, and to each and every of them.

16. Midd. ff **W** Hereas _____ an Inhabitant,
and Occupier of an House in
Street in the said Parish of _____
duly rated and assessed the Sum of _____ towards the Pay-
ment of the Scavengers or Rakers in the said Parish for cleansing
the Streets, Lanes, Courts and Alleys therein; and taking, or
causing to be taken, and carried away therefrom the Dust, Dirt,
Ashes, Filth, and Soil for this present Year _____ and has
neglected and refused to pay the said Sum of _____ rated
upon him, although the same has been demanded of him by the
Scavengers of the said Parish at his House, as appears upon Oath
unto us, two of his Majesty's Justices of the Peace for the said
County (Quorum unus): These are therefore in his Majesty's
Name to require you, or some of you, forthwith to levy the said
Sum of _____ by Distress and Sale of the Goods and
Chattels of the said _____ rendering to him the
Overplus (if any be), and if no such Distress can be had or taken,
that then you certify the same to us, to the End we may further
proceed therein as to Law doth appertain. Given under our
Hands and Seals, this _____ Day of _____ 17

17. The Householdors within the weekly Bills of Mortality, Householdors to
whose Houses adjoin to the Streets, shall hang out Lights from hang out
the Time it grows dark till Twelve o'Clock at Night, from Lights, &c.
Michaelmas to Lady-Day, or pay for Lamps, under the Pe-
nalty of two Shillings for every Default, &c. This is al-
tered as to London by a subsequent Statute, viz. 17 G. 2. c. 29.

18. And by the Stat. 8 & 9 W. 3. c. 37. relating to Sca- Rules about
vengers, Owners of Hay brought into the Hay-market are to Hay and other
pay Three-pence per Load, and for Straw one Penny, to such Carts.
as Justices of Peace shall appoint, towards mending the Street
called the Hay-market; and no Person shall suffer their Wag-
gons, Carts, &c. to stand in any Place within the weekly
Bills of Mortality laden with Hay or Straw, from Michael-
mas to Lady-Day after Two o'Clock in the Afternoon, nor
from Lady-Day to Michaelmas after Three o'Clock, on Pain
of 5 s. for each Offence.

19. And by Stat. 2 W. & M. c. 8. the Wheels of Carts
(Country Carts, those used for carrying Goods Half a Mile be-
yond

yond the paved Streets, and of Scavengers excepted) are not to be less than six Inches in the Felly, and to be without Iron, and drawn only by two Horses after they are up the Hills near the Water, under the Penalty of two Pounds for every Cart otherwise. And by Stat. 6 G. 1. c. 6. any Carman, &c. riding in a Cart or Dray, not having another on Foot to guide it, forfeits 10 s. to the Informer and the Poor of the Parish. And Carts in London are not to carry beyond the Quantities of Bricks, Coals, &c. appointed, on Pain of forfeiting one of the Horses, &c. *Vide* 6 G. 1. c. 6.

20. By Statute 2 W. & M. c. 8. new Sewers made in any of the said Parishes since 12 Car. 2. shall be subject to the Commissioners of Sewers, who may direct making new ones, and alter any Nuisances, cross Gutters and Channels in the Streets or Lanes.

21. Officers may in the Day-time by Warrant from the Lord Mayor, or one Justice, &c. search for Swine, and drive them away, and sell them, and deliver the Money to the Churchwardens, &c. for the Use of the Poor.

22. In Actions commenced for putting 22 & 23 Car. 2. c. 17. (intituled, *An Act for the better paving and cleansing the Streets, &c. in the City of London*) or 2 W. & M. c. 8. in Execution, the Defendant may plead the General Issue, and give the Act or Special Matter in Evidence; and if the Plaintiff is nonsuit, discontinue, or a Verdict against him, shall pay treble Costs. Highways leading from the East Side of Clerkenwell-Green to St. John's-Street shall be paved as that Act directs.

23. By Statute 8 & 9 W. 3. cap. 37. where one Side of a Street or a Lane lies within the Bills of Mortality, and the other Side without, the Justices of Peace may cause the respective Inhabitants to pave that other Side, under the same Penalty, as if the same had been within the Bills of Mortality.

24. Where there is any Liberty, Precinct or Village within the weekly Bills, that uses to repair their own Highways, and also perform Days Work to other Highways, and are or shall become unable, the Justices of Peace at their Special Sessions to be held every four Months, may allow so many Days Work, as the said Justices shall think fit, to be employed by the Inhabitants of such Liberty, &c. and the Residue of the Day's Work, as such Inhabitants are liable to, shall be employed in repairing the other Highways.

25. So much of the ancient Highway leading from Tottenham Court near St. Giles's Pound towards Tyburn, as is new built on both Sides thereof, shall be hereafter repaired, paved and maintained by such Persons as have heretofore used to repair, pave and maintain the same under the Penalties aforesaid.

26. N. B.

26. N. B. the Inhabitants be paid their own Dues, and the Benefit of the Pavement Rates.

27. I. the Statute Streets; was, if out of the Rates; Inhabitants

28. A. dlessex (for carrying the Street Ward, Tuesday the Poor's Day) the Poor's Day

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26. *N. B.* The Pavements of Streets are to be repaired by the Inhabitants of the said Streets, and the Scavengers are to be paid by the Parishioners: Persons are bound to repair their own Doors at their own Costs, they having the principal Benefit of it, and those Persons who are thus bound to repair the Pavements, are to contribute to the Payment of the Scavengers Rates. *Rex v. Inhab. Newington, Salk. Reports 356.*

27. In the Case of the Parish of *Newington-Butts*, upon Case of Newington-Butts. the Statute of 2 *W. & M. c. 8.* for paving and cleaning the Streets; the Question between the Inhabitants within this Parish was, if that Part of them which inhabited within the County out of the Paving, should be contributory to the Scavenger's Rates; and the Court held the Rate, which charged all the Inhabitants generally, to be good. *Skinner 643.*

A Scavenger's Rate.

28. **A** Rate on the Inhabitants of the Parish of *in the Liberty of Westminster in the County of Middlesex (living in Ward) in the said Parish* for carrying away the Dirt, Dust, Ashes, Filth and Soil out of the Streets, Lanes, Courts, Alleys and publick Places of the said Ward, from Easter Tuesday, April the 11th 1732, to Easter Tuesday 1733. Made by us the Churchwardens, Overseers of the Poor, Surveyors of the Highways, Constables and other ancient Inhabitants of the said Parish, the Day of 1732, at Two-pence in the Pound for each Pound by the Year.

A. B.	}	Churchwardens.
C. D.		
E. F.	}	Overseers of the Poor.
G. H. &c.		

W E whose Names are hereunto subscribed, his Majesty's Justices of the Peace for the City and Liberty of Westminster in the County of Middlesex, (one whereof being of the Quorum) do approve of, allow and confirm the foregoing Rate. Given under our Hands and Seals, &c.

C H A P. LX.

Bridges.

By whom
Bridges ought
to be repaired

1. **A**LTHO', strictly speaking, Bridges are not under the Cognizance of Surveyors of the Highways, yet in regard they have so near a Relation thereunto, it may not be improper to add a few Things in this Place concerning them.

2. The County of common Right is bound to repair publick Bridges: But a particular Perion, Town, &c. may for a special Cause be bound to repair them; as by Tenure, Prescription, &c. 2 *Ld. Raym.* 1251. *Regina v. Justices of Liberty of St. Peter's in York.* If a private Person build a private Bridge, which after becomes of publick Convenience, the whole County is bound to repair it. 6 *Mod.* 307. *Cro. Car.* 365. And where it cannot be discovered who ought to make good the Repairs of Bridges, it must be presented by the Grand Jury in the Quarter-Sessions; and after their Inquiry and an Order of Sessions upon it, four Justices, whereof one to be of the *Quorum*, may send for the Constables of every Parish, or two of the Inhabitants of each Parish, to appear before them at a fixed Time and Place to make a Tax, and then the Justices shall tax every Inhabitant in a reasonable Sum for the Reparation of the Bridge, &c. Also appoint Collectors of every Hundred to collect the Money, and distrain for the same; and Surveyors to see the Repairs done; both of whom are to be accountable to the Justices in Sessions. *Statute 22 H. 8. c. 5.*

3. By the Statute 1 *Ann. c. 18.* Justices in Sessions, upon Presentment made that a Bridge is out of Repair, may assess every Town, Parish or Place in Proportion towards the Repairs thereof; the Money assessed is to be levied by the Headboroughs or Constables, &c. by Distress and Sale of Goods, if not paid in ten Days after demanded; and when levied must be paid to the High Constables of Hundreds, who are to remit the same to Treasurers, &c. appointed by the Justices to be employed according to their Orders and Directions. And if any of the Officers neglect to assess, collect or pay the Money, they shall forfeit 40 s. and Receivers paying Money without Orders of Justices shall forfeit 5 l. Collectors, &c. of the Tax to be allowed 3 d. per Pound. This Statute confirms the 22 *H. 8. c. 5.* in most Things, and on an Indictment for not repairing of Bridges, a Fine may be set by the Justices in Sessions on any Inhabitant of the County, being made Defendant

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dant to the Indictment, who shall have Contribution from the rest, &c. 6 *Mod. Rep.* 307.

4. If Bridges are within two Precincts, then the Inhabitants of each Precinct ought to pay their respective Parts towards the Repairs. *Roll. Abr.* 368. But if it can be proved, that a Man and his Ancestors have Time out of Mind repaired a Bridge, such Prescription shall bind him and his Heirs, where it is done at first by Reason of some Tenure of his Lands; for particular Persons shall not be bound by Prescription to repair, &c. if it be not in respect of the Tenure of their Land, or of some Profit arising from the Bridge. *Co.* 13 *Rep.* In both which Cases he must repair, and not the County. So 'tis likewise of any Corporation Spiritual or Temporal. And where a Charge is by reason of Tenure, every Owner of the Land is to be charged in Proportion. But a Lord of a Manor is not chargeable merely as such, as was finally resolved in Sir *John Bucknall's* Case, by *Holt* Ch. J. and the whole Court of *B. R.* although *Holt* had been of another Opinion at the Trial at the Assizes. *Regina* versus Sir *John Bucknall*, 2 *Ld. Raym.* 792, 804.

Particular Persons not bound to repair Bridges by Prescription, unless they have some Benefit by the Bridges.

5. If any Person hath Toll or other Profit for Passage over a Bridge, he ought to repair it; and if a Bridge was built at first to serve a private Purpose, and afterwards becomes necessary for the Publick, the County must repair it. 2 *Inst.* 701. *Reg.* versus *Com. Wilts.* 1 *Salk.* 359. *Mod. Cases* 191.

6. The Persons who repair Bridges must likewise repair the Way for 300 Feet at each End of the Bridge, 2 *Co.* 2. and they may enter on the Lands contiguous, and lay Stone, Timber, and other Materials there for repairing of the said Bridge, without being prosecuted by the Owners of such Lands, because 'tis for the publick Good.

7. In Cases where Persons are bound to repair by Tenure, and the Party indicted found guilty for not repairing, the King may pardon the Fine, but not the Offence; for that continues still, and he may be indicted again. 2 *Co.* 30. No Fines upon Presentments or Indictments, &c. shall be returned into the Exchequer, but shall be paid to the Receiver appointed by the Justices; and all Matters concerning repairing and amending Bridges shall be determined in the County where they are situated, and not elsewhere; and no Presentment or Indictment shall be removed by *Certiorari* before Traverse and Judgment. 22 *Car.* 2. c. 12.

No Fines to be returned into the Exchequer.

8. And by the same Act, if any Suit be brought for putting that Act in Execution, the Defendant may plead the General Issue, and give the Act of 22 *Hen.* 8. c. 5. and also this Act in Evidence; and if he has a Verdict, shall have double Costs. And by this Act 'tis also further provided, that the Evidence

of

Inhabitants
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of the Inhabitants of such Places where the Bridges are in Decay, shall be taken and admitted at any Trial upon an Information or Indictment, &c.

9. On an Indictment for not repairing of Bridges, a Fine may be set by the Justices in Sessions on any Inhabitant of the County, being made Defendant to the Indictment, who shall have Contribution from the rest, &c. 6 *Mod. Rep.* 307. And the safest Way for the Justices, is to do all Things which relate to Bridges in the open Sessions, as well where 'tis not known who shall repair, as where the Person obliged to repair is known.

10. The Act of 22 *H. 8. c. 5.* doth not extend to the Cinque Ports, or Members of the same, where the Warden, Mayors, and Bailiffs elected, and Jurats of the same, have such Power and Authority as Justices in their Shires, &c. None can be compelled to make new Bridges where never any were before, but by Act of Parliament. 1 *Roll.* 368.

Cases of re-
pairing
Bridges.

11. If one erect a Mill for his private Profit, and makes a new Cut for the Water to come to it, and a new Bridge over that Cut, where the King's Subjects pass and repass, it must be repaired by those who have the Mill, and not the County. 8 *E. 3. B. R.* adjudged for *Bow-Bridge* and *Channel-Bridge*, against the Prior of *Stratford*; and it is now repaired by the City of *London*, which hath the Mill. And where a Man and his Ancestors or Predecessors, have used Time out of Mind to repair a Bridge, the King cannot acquit or discharge them thereof. *Fitz. G. Abridgment* 94.

12. Justices of Peace, where a decayed Bridge is, may award Process into the County where the Party or Land chargeable is. *Dalt.* 45.

Cases of re-
pairing of
Bridges.

13. Indictment for not repairing a Bridge in *Nottinghamshire* against all the Inhabitants of the County; they plead that *J. S.* ought to repair it, *absque hoc* they; the Plaintiff replies, that they *absque hoc J. S.* Issue joined in the last Traverse, and tried by a Jury of *Middlesex*, because they are all Parties. *Nota hoc*, and the Manner of this Pleading and Issue. *Rever. Inhabitan. de Com. Nottingham, M. 26 Car. 2.* in *B. R.* Adjudged upon a Trial at Bar on an Information for not repairing a common Bridge, which the Defendants were bound to repair, that if a Manor is held by the Tenure of repairing a Bridge or Highway, which Manor afterwards comes into several Hands; that in such Case every Tenant of every Parcel, either of the Demesnes or Services, is liable to the whole Charge, but shall have Contribution of the rest. 'Tis true, the Lord of the Manor may agree with every Purchaser to discharge him from repairing; but such an Agreement will not alter the Remedy which the Publick may have; it only binds the Lord, who shall never apportion the Charge, and make the

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the Remedy for the Publick more difficult; neither shall he take away the Remedy by Alienations to Persons unable to pay, and tho' the Manor comes to the Crown, the charge shall continue. *Reg. v. Duke of Bucclugh & al*, 1 Salk. 358. *Mod. Cases* 150.

14. Any Inhabitant of the County may be a Witness, but the Jury must be of the next County. 1 Salk. 159. *Mod. Cases* 191, 306. Generally and of common Right the whole County is liable, and not the Owners of the Land adjoining. If Evidence can be given that a Man hath once repaired, tho' not for many Years, yet those who have his Estate in the Land shall be liable, because it shall be supposed to be done by Reason of his Tenure, unless some other Cause can be shewed; and when a Charge is by Reason of Tenure, every Owner of Land is to be charged proportionably.

15. Grand Juries ought to find who are to repair Bridges. And Justices of Peace are to award Process to get Bridges repaired. *Dalt.* 45. And a Bridge between two Counties is to be repaired between them. *Poph.* 192. *Roll. Abr.* 368. And if a private Man build a Bridge which after becomes of publick Use, then that makes it a County-Bridge. *Black.* 74, 75.

16. By *Stat.* 14 Car. 2. c. 6. All Bridges shall have sufficient Wall, or Posts and Rails on each Side four Foot high, at least from Time to Time to be kept sufficiently repaired. The Taxation for Repair of Bridges ought not to be made by the Justices without the Consent of the Constables or Inhabitants, nor by them without the Justices; and this Tax ought to be upon every Inhabitant in particular, and not to be set upon the Hundred, Parish, Town, &c. for then one or few might be distrained upon for the whole. *Co. 2 Inst. fol.* 704.

17. Where a Franchise, City or Borough, is a County of itself, and hath not four or more Justices of the Peace (whereof one or more are of the *Quorum*) in this Case no other Justices of the Peace in any Shire or County have any Power to meddle here. By the Act of 22 Hen. 8. c. 5. But such Decay must be amended by the Common Law, by such Remedies as they were antiently before the Statute of 22 Hen. 8. c. 5.

How Bridges are to be mended in Cities, &c. which are Counties of themselves.

A Warrant to levy the Forfeiture of a Constable or, &c. for refusing or neglecting to return Lists.

B. Berks, ff. **W** Hereas A. B. the Constable or Tithingman of the Parish of, &c. in the County aforesaid, hath refused or neglected to make and return a List of the Names of a sufficient Number of Inhabitants of the said Parish of, &c. qualified by Law to serve the Office of Surveyor or

3 & 4 W. & M. c. 12. two Justices, one Witness upon Oath.

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Sur.

Surveyors of the Highways in the said Parish for the Year ensuing; notwithstanding we sent our Precept to him, requiring the same this Day at, &c. being a special Sessions held for the choosing of such Surveyors, and for putting the Lawes in Execution for repairing of Highways, whereby he hath forfeited the Sum of 20s. These are therefore in his Majesty's Name to command you to levy the said Sum of 20s. by Distress and Sale of the Goods of the said A. B. rendering to him the Overplus, if any such shall happen to be, the necessary Charges of distraining being first deducted. Given, &c.

A Warrant to levy the Forfeiture for refusing to serve the Office of Surveyor, &c.

Moiety to Informer, the other to amend the Highways.
2 & 3 P. & M. c. 8. two Justices.

19. Berks, ff. **W** Hereas C. D. of, &c. was, at a special Sessions held on the third Day of this Instant January, lawfully nominated and appointed to serve the Office of Surveyor of the Highways, in and for the Parish of, &c. for the Year ensuing; and it having been duly proved before us, that the said C. D. had Notice of the said Nomination within six Days after the same; and that he hath refused to take upon him the said Office, whereby he hath forfeited the Sum of 5 l. one Moiety thereof to be paid to E. D. of, &c. who hath informed us of the said Offence, and the other Moiety to be applied towards the Repairing of the Highways: These are therefore to command you to levy the said Forfeiture of 5 l. on the Goods and Chattels of the said C. D. by Distress and Sale thereof, to be paid and employed as aforesaid, and that you do forthwith return to us or some other Justice, &c. the Names of other Persons within your Parish fit to serve the said Office of Surveyor, that the Business of the Highways may not be neglected. Given, &c.

A Warrant to levy the Forfeiture on a Surveyor for not erecting a Post at Crossways for Direction of Travellers.

3 & 9 W. 3. c. 16.

20. **W** Hereas the Post some Time since erected and set up in the Highway leading to, &c. at the Meeting of several Crossways therein, is decayed and consumed so as to be rendered useless, and E. D. &c. Surveyor of the Highways in the said Parish of, &c. being ordered by us to erect, fix, and set up a new Post at the Meeting of the Crossways aforesaid, with an Inscription thereon in large Letters, setting forth the Name of the next Market-Town, to which each of the said Crossways leads, according to the Act of Parliament in that Case made, hath neglected

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acted to do the same, whereby he hath forfeited the Sum of 10 s. to be employed towards the Erecting and Setting up such Post: These are therefore to require you to levy the said Sum of, &c.

A Warrant against a Surveyor refusing to Account.

21. Berks, ff. **W** Hereas it hath been duly proved before us J. S. and P. M. Esqrs. two of his Majesty's Justices of Peace for the County aforesaid, That J. O. Surveyor of the Highways in and for the said Parish, hath neglected to give an Account upon Oath at any special Sessions of all Money which hath come to his Hands, and which ought to be employed in amending the Highways, and how he hath disposed thereof, so that for such his Neglect he hath forfeited the Sum of 40 s. one Moiety to the Informer, and the other to repair the Highways in the said Parish: These are therefore, &c.

Two Justices,
one Witness,
upon Oath.

A Warrant against a Surveyor refusing to deliver what remains in his Hands to the succeeding Surveyors.

22. Berks, ff. **W** Hereas R. G. of, &c. this Day made Oath before us J. S. and P. M. Esqrs. two of his Majesty's Justices of the Peace, &c. That M. N. Surveyor of the Highways in and for the Parish of A. &c. hath refused to deliver to the next Surveyors of the Highways in the said Parish, what Monies remained in the Hands of the said M. N. which ought to be employed in amending the said Ways; which said Money doth amount unto 40 s. by Reason whereof he hath forfeited double the Value; one Moiety to the Informer, the other to amend the Highways in the said Parish: These are therefore, &c.

Two Justices,
one Witness.

An Information against a Person drawing a Waggon with more Horses than allowed by Law.

23. **T** H E Information of C. D. of, &c. taken before A. B. Esqrs. one of his Majesty's Justices of the Peace for the County of, &c. this Day, &c. the said C. D. saith on his Oath, that in and upon, &c. last past, he the said C. D. saw a Waggon belonging to, &c. of, &c. in the said County, Carrier, travel through

through the Parish of, &c. in the plain Road some Distance from any Hill, &c. drawn by seven Horses at Length.

Sworn before me the Day
and Year aforesaid.

N. B. Drawing of travelling Carriages with more Horses than are allowed by Law, is a Nuisance by Statute, as it prejudices the Highways.

The Precept of the Justice to deliver the Horse seized on drawing with above six Horses, to the Seizor.

24. Berks, ff. **W** Hereas on the Day of the Date hereof, it was duly proved before me upon the Oath of C. D. of the Parish of, &c. That a Waggon travelling in the Road for Hire, on the, &c. of July, &c. last past, in the Parish of, &c. aforesaid, and not employed in Husbandry; but loaded with Goods not excepted by any Law whatsoever, was drawn with more than six Horses, contrary to the Statute in that Case made and provided, by Reason whereof one Horse being above six in the said Waggon, drawing it in Manner as aforesaid, with all Gears, Bridles, Halters and Accoutrements, were then and there seized by the said C. D. as forfeited, and were delivered by him to the Constable of, &c. aforesaid, that bring the next Parish where such Seizure was made: Now I do hereby command you the said Constable of, &c. forthwith to deliver the said Horse and other the forfeited Things, unto the said C. D. who first seized the same, to and for his sole Use and Benefit, he paying unto you the said Constable 2 s. for keeping and securing the same for two Days. Given under my Hand, &c.

An Order of Sessions for repairing a Bridge.

At the General Quarter-Sessions of the Peace, and so forth, of our Lord the King, held for the County aforesaid at L. in the same County, on the Day of in the Seventh Year of our Lord George, &c. and in the Year of our LORD GOD 1739.

25. Essex, to wit. **W** Hereas the Inhabitants of, &c. in the County aforesaid, were at the last General Quarter-Sessions held for the said County indicted for repairing of a Bridge, called, &c. then and now in Decay: And whereas upon Trial of the Traverse joined, and the County be-

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ving Notice, it was then and there found that the said Inhabitants ought not to repair the said Bridge, and the Jury having presented, that it cannot be made appear, that any particular Hundred or Parish, Lands or Tenements in the said County of, &c. ought of Right to repair the same: It is therefore now order'd by this Court, and we do hereby, according to the Form of the Statute in that Case made and provided, order and direct, that the said Bridge shall be well and sufficiently repaired by the Inhabitants of the County of, &c. within which the said Bridge standeth, and that the Justices of the Peace within their several Divisions, do take Care of the raising Monies for that Purpose. In Witness, &c.

A Warrant to the Constable, &c. to make a Tax for the Repairs of a Bridge pursuant to the aforesaid Order.

26. Essex, ff. **W** Hereas at the General Quarter-Sessions of ^{22 H. 8. c. 5.} the Peace held for the County aforesaid, Four Justices, Quorum unus. at, &c. on, &c. last past, the Grand Jury presented the Bridge, called, &c. in the Parish of, &c. in the said County, to be in Decay and out of Repair, and the said Decays and Reparations were then and there ordered to be amended, and made good at the Charge of the County: These are therefore in his Majesty's Name to command you the said Constable and Inhabitants aforesaid, that you do immediately, upon the Receipt of this Precept, make a Taxation on all and every the Inhabitants of the Hundred or Division of, &c. aforesaid, for the raising of the Sum of, &c. to be applied towards the Repairing of the Bridge aforesaid, and that you do bring the said Tax fairly written and subscribed by you or some of you, unto us, at the House of, &c. on, &c. next, for our Approbation, and that we may further proceed therein as to Justice doth belong. Given, &c.

An Order of Sessions for a Rate to repair Highways, &c.

The City, Borough and Town } At the General Quarter-
of Westminster in the County } Sessions of the Peace.
of Middlesex, to wit.

27. **U** P O N reading the humble Petition of the Churchwardens and Surveyors of the Highways of the Parish of in this Liberty, exhibited to this Court, thereby shewing, that the common Highways, Causeways and Pavements in the said Parish are very much out of Repair, and will require

require the Sum of _____ and upwards, to repair and amend the same; which cannot be raised without the Aid of this Court; it was therefore prayed by the Petitioners, that a Rate may be made upon the Inhabitants of the said Parish, not exceeding Three pence in the Pound for repairing the said Highways, Causeways and Pavements, according to the Direction of the Statutes in that Case made and provided; to be collected by the present Surveyors of the Highways in the said Parish, and that the Money to be collected on the said Rate, may be employed and laid out, as the Justices of Peace for this City and Liberty, usually meeting at their special Sessions in the said Parish, shall direct and appoint. Now for as much as it appeareth in this Court, that the common Highways, Causeways, and Pavements in the said Parish, are very much out of Repair, and that it is necessary and requisite, that a Rate or Assessment, not exceeding three Pence in the Pound, as hereafter mentioned, should be made upon the Inhabitants of the said Parish for repairing the said Highways, Causeways, and Pavements; and that without such Rate the same cannot be otherwise sufficiently amended, repaired, paved, cleansed, and supported. It is therefore thought fit and ordered by this Court, that the Churchwardens, Surveyors of the Highways, and such other Inhabitants of the said Parish, as are usually present at making the Parish Rates, do forthwith, upon publick Notice given in the said Parish Church the Sunday before they meet, at their usual Place of Meeting within the said Parish, make a Rate or Assessment upon all and every the Inhabitants, Owners, and Occupiers of Houses, Lands, Tenements and Hereditaments, or any personal Estate in the said Parish, usually ratable to the Poor, according to a Pound Rate, not exceeding three Pence in the Pound, of the yearly Value of the said Houses, Lands, Tenements, and Hereditaments, and the Rate of three Pence for every twenty Pounds in personal Estate, for Repair of the said Highways, Causeways, and Pavements within the said Parish; and this Court doth order, direct and appoint, that the said Assessment so to be made, be allowed by any two or more of his Majesty's Justices of the Peace for this City and Liberty inhabiting in the said Parish, and that the Surveyors of the Highways within the said Parish, shall be Collectors of the said Assessments when made and allowed of as aforesaid, and that the said Assessment be levied by the Surveyors of the Highways, or any two of them, according to the Statutes in that Behalf, by Distress and Sale of the Goods of every Person so assessed, and not paying the same within ten Days after Demand, rendering the Overplus of the Value of the Goods so distrained to the Owner and Owners thereof: the necessary Charges of making and selling such Distress being first deducted. And it is further ordered by this Court, That the said Surveyors of the Highways of the said Parish, do employ the Monies so

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be collected for Repair of the the said Highways, for and towards the amending, repairing, paving, cleansing, and supporting such Highways, Causeways, and Pavements within the said Parish; and it is further ordered and directed by this Court, That if any Person shall refuse or neglect to pay the Sum for which he shall be rated by the Space of ten Days after Demand thereof, then, upon Application to any two of his Majesty's Justices of the Peace for this City and Liberty, inhabiting within the said Parish, such Justices may grant their Warrants for levying the same in the Manner before mentioned. And it is also hereby further ordered, That the said Surveyors of the Highways shall well and truly account for the whole Sum, which shall be by them levied and collected upon the said Assessments, to his Majesty's Justices of the Peace which shall be assembled at the next General Quarter-Sessions of the Peace to be held for the said Liberty, after the Election of new Surveyors for the said Parish for the Year ensuing. Per Cur'.

A Warrant to distrain for a Highway Rate.

To Surveyors of the Highways in the Parish of _____ in the County of Middlesex, or to any two of them, and to all others whom these may concern.

28. Middlesex, to wit. **W** Hereas in and by a Rate, Tax, or Assessment made, assessed and allowed, according to the Direction of the Statute, and in Pursuance of an Order of the General Quarter Sessions of the Peace held for the said County of Middlesex, an equal Assessment of _____ in the Pound, was in and by the said Order directed to be made upon all and every the Inhabitants, Owners and Occupiers of Lands, Houses, Tenements, and Hereditaments, according to their yearly Value, and _____ for every twenty Pounds in Personal Estate, usually ratable to the Poor within the said Parish of _____ for Repair of the common Highways, Causeways, and Pavements within the said Parish. And whereas _____ an Inhabitant and Occupier of an House in the said Parish of _____ in the County aforesaid, was rated and assessed pursuant to the said Order of Sessions, for and towards the necessary Repair of the common Highways, Causeways, and Pavements in the said Parish for this present Year, the Sum of _____ and both refused and neglected to pay the said Sum of _____ assessed upon _____ as aforesaid, although the same hath been demanded of the said _____

by two of the Surveyors of the Highways of the said Parish, in the Manner directed by the said Order of Sessions. And whereas it appeareth unto us of his Majesty's Justices of the Peace for the said County of Middlesex, inhabiting within the said Parish (whereof one is of the Quorum) upon Oath, that the said Sum of hath been demanded in Person, and at the House of the said more than ten Days before the Date hereof, and is still in Arrear and unpaid, and that also the said hath been summoned to appear before us, to shew Cause why he did not pay the said Rate, and hath not appeared nor shewn sufficient Cause: These are therefore in his Majesty's Name to will and require the said Surveyors, or any two of you, forthwith to levy the said Sum of so in Arrear from the said by Distress and Sale of Goods, rendering to the Overplus (if any be) the necessary Charges of making und selling such Distress being first deducted; and for your so doing, this shall be your Warrant. Given under our Hands and

A Warrant to levy the Forfeitures for Neglect of Statute Work in Highways, &c.

To Surveyors of the Highways in the Parish of in the County of Middlesex, and to all others concerned.

29. Middlesex, to wit. **W** Hereas it hath been proved before us upon Oath, that due and publick Notice hath been given and published in the parish Church of the Parish of in the said County of Middlesex, for six Days Labour or Statute-Work to be had, done and performed by all and every Person within the said Parish chargeable to the Repairs of the Roads, common Highways, Causeways, and Pavements therein, for and towards the Repairing and Amending the same as by Law they ought. And whereas it has been proved upon the Oath of a credible Witness before us, two of his Majesty's Justices of the Peace for the said County, that an Occupier of an House in the said Parish of Labourer, or that A. B. an Occupier of two Plough Lands, or having two Carts in the said Parish of (as the Case is) hath failed, neglected, and made Default to do and perform his six Days Labour or Statute Work in the Roads and Highways of the said Parish, for and towards the Repairing and Amending the same this present Year, pursuant to publick Notice aforesaid, or hath failed, neglected, and made Default to send his (Teams) or Carts

to be employed in doing and performing the six Days Labour or Statute Work in the Roads and Highways of the said Parish, for and towards the Repairing and Amending the same this present Year, pursuant to publick Notice as aforesaid, (as the Case is) : And whereas he the said *has been* summoned to appear before us, to shew Cause why he should not pay the Penalty or Sum of nine Shillings (viz.) One Shilling and Six-pence for each and every of the said respective six Days by him forfeited, for his said several Neglects in not performing his Statute Work as aforesaid, or (six Pounds) viz. ten Shillings for each of the said (Teams, Carts) for every of the said respective six Days by him forfeited, for his said several Neglects in not sending his two (Teams, Carts) to do and perform his Statute Work as aforesaid (as the Case is) and has not appeared before us, or made any reasonable Excuse, although Service of a proper Summons upon him for that Purpose has been proved upon Oath. These are therefore in his Majesty's Name to require you the said Surveyors forthwith to levy the said Penalty or Sum of *by him forfeited* as aforesaid, by Distress and Sale of his Goods, rendering to him the Overplus, (if any be) reasonable Charges of distraining being first deducted: And that you do apply the said Sum, when levied, in such Manner, and for such Purposes and Uses as the Statutes direct and appoint. And for the due Execution hereof you are to make a just and true Return when required. Given under our Hands and Seals this *Day* of *1739*

An Order of the Justices for a Surveyor to dig Gravel, &c. for repairing the Highways.

30. Berks, to wit. **W** Hereas Complaint hath been made before us, two of his Majesty's Justices of the Peace for the said County, by C. D and J. K. Surveyors of the Highways of Newbury in the County aforesaid, That there is not sufficient Gravel, Sand, or Stones, in the said Parish of Newbury, for the repairing of the Highways therein: We do therefore, in Pursuance of the Authority given us by the Statute, hereby order and allow the said Surveyors, or either of them, and such Person or Persons as they or either of them shall appoint, to dig, take and carry away Gravel, Sand, or Stones, out of any Waste or Common in any Parish or Village in the Neighbourhood of the said Parish of Newbury, without paying any Thing for the same, to be employed in repairing and amending the Highways aforesaid; so as they do fill up the Place from whence such Gravel, Sand, or Stones, shall be so digged, (if required by the Owner of the Soil.) Given under our Hands, &c.

A War-

A Warrant to levy the Penalty on a Carter or Drayman, &c. riding on his Cart, &c.

31. Middlesex, to wit. **W** Hereas
Drayman, was this Day lawfully convicted before me, one of his Majesty's Justices of the Peace for the said County, for riding on
driving the same in *Street in the Parish of*
(not having any Person or Persons on
Foot to drive, conduct, or take Care of them, as by Law he
ought) and for which Offence he the said *hath*
forfeited the Sum of *The one Moiety for*
the Use of the Poor of the said Parish of *and*
the Remainder to the Use of *the Informer.*
 These are therefore to require you, and every of you, on Sight
 hereof, to levy the said Sum of
 Distress and Sale of the Goods and Chattels of him the said
rendering to him the Overplus,
 (if any be) and if no such Distress can be had or taken, that
 then you certify the same to me, to the End I may further pro-
 ceed therein as to Law doth appertain. Given under my Hand
 and Seal this *Day of* 1739.

A Warrant to apprehend a Carman, or Drayman, &c. and commit them to Bridewell on Default of Distress.

To the Constables, and other Peace-Officers, whom these may concern, and to the Keeper of the House of Correction for the County of Middlesex, or his Deputy there.

32. Middlesex, to wit. **W** Hereas
each of them standeth convicted before me *and*
one of his Majesty's Justices of the Peace for the County of *stand, and*
 Middlesex, upon the Oath of *Constable, for*
riding on their several and respective *and*
driving the same in *Street in the Parish of*
in the said County, not having any
 Person or Persons on Foot to guide or conduct the same, contrary
 to an Act of Parliament in that Case made and provided;
 for which said Offences the said *and*
have respectively forfeited the Sum
 of *each, to be levied, employed, and dis-*
posed

posed of, as the said Act directs. And whereas they the said
 and severally
 refused to pay the said Sum of each,
 and I thereupon granted my Warrant, dated the 19th Day of
 last, to levy the said Sums by Distress and
 Sale of the several and respective Goods and Chattels of the
 said and rendering to them and to each of
 them the Overplus (if any should be) according to the Directions
 of the said Act. And whereas
 one of the Constables of the said Parish of
 to whom the said Warrant was delivered to be executed, did on
 the Day of last, make a Return
 of the said Warrant, and certified unto me, That upon Enquiry
 or Search it appeared unto him, that the said
 and had not, nor either of them had
 any Goods or Chattels, whereof a sufficient Distress could be had
 or taken to levy the said Forfeitures. These are therefore to
 require you and every of you to apprehend the said
 and and them, and each
 of them safely to convey to the House of Correction for the said
 County of Middlesex, and deliver them to the Keeper or Master
 thereof, together with this Warrant, hereby commanding also you
 the said Keeper or Master to receive them the said
 and
 into your said Gaol, and them to put to Hard Labour, and
 safely keep for the Space of three Days respectively, as the said
 Act directs, and no longer. Given under my Hand and Seal
 this Day of 1739.

A Warrant against a Person for laying Dirt, &c.
 in the Street.

33. Middlesex, to wit. **W**Hereas Complaint upon Oath has
 been this Day made unto me, by
 S. P. &c. that R. K. an Inhabitant of your Parish, on, &c.
 last past, laid in the Street before his House a large Quantity of
 Dirt, &c. to the great Annoyance of Passengers who pass that
 Way, and contrary to the Statute in that Case made and pro-
 vided: These are therefore to command you to bring the said
 R. K. before me, or some other Justice, &c. to answer the Pre-
 misses. Given, &c.

An

An Indictment for stopping and obstructing an Highway.

1 Lut. 490.

34. Berks, to wit. **T**HE Jurors, &c. that whereas from the Time of which the Memory of Man is not to the contrary, it was used that the liege Subjects of the Lord the King had, and lawfully used, a certain common Highway at N. in the County of Berks aforesaid, in a certain Place there, called *leading from the Town of N. aforesaid, unto the Borough of L. in the County aforesaid, for themselves and their Chattels, without any obstructing or Hindrance by any Ditches, Hedges, or other Obstacles whatsoever; nevertheless one W. A. of N. aforesaid in the County aforesaid, on the 23d Day of March in the Year of the Reign*

bath dug and erected a Ditch and Quickset Hedge at N. aforesaid, in the Place aforesaid, upon the common Highway aforesaid, and still keeps the said Ditch and Quickset Hedge so dug and erected as aforesaid, to the great Obstruction and Hindrance of the liege Subjects of the said Lord the King passing the said Highways, and against the Peace of the said Lord the King, his Crown and Dignity.

A Warrant against a Person for letting Horses through Grounds to avoid the Toll at a Turnpike.

G. 1. c. 30.

35. Middlesex, to wit. **W**HEREAS C. D. of, &c. was this Day legally convicted before me, by the Oaths of, &c. of driving several Horses through certain Grounds adjoining to the Highway leading to Hampstead, to avoid the Payment of the Toll (that is due by Statute from all Persons passing the Highway) contrary to the Statute aforesaid: These are therefore in his Majesty's Name to require you to levy the Sum of 10 s. on the said C. D. by Distress and Sale of his Goods for the Offence aforesaid. Given, &c.

An

An Appointment of a Receiver of Toll at a Turnpike.

At the General Quarter-Sessions of the Peace held at, &c.
on, &c.

36. **W**E whose Names are hereunto subscribed, and Seals affixed, being Justices of the Peace for the County of, &c. aforesaid, do (by Virtue of an Act of Parliament made and passed, &c. hereby appoint C. D. of, &c. Receiver and Collector of the Toll (for the Year ensuing) ordered by the said Statute to be paid for all Horses, Coaches, Waggon, Carts, Cattle, Sheep, &c. at the Turnpike erected on the Highway leading, &c. for the Reparation of the said Way, being 1 d. for every Coach, &c. And if any Person shall refuse to pay the said Toll, the said C. D. is hereby appointed to distrain and detain any Horse, Coach, &c. until the same, and the Charge of Distress shall be fully satisfied and paid; and the said Toll so from Time to Time received, the said C. D. is to pay to, &c. Surveyor of the said Roads, and to account for the same to us, or some other Justices of the Peace of this County, when thereunto required. Given, &c.

An Adjudication of Justices when Roads are repaired by a Turnpike.

At the General Quarter-Sessions of the Peace held at, &c.
on, &c.

37. **W**Hereas the Justices of the Peace for the County of ³ G. 1. c. 30. Middlesex, have Power and Authority by Act of Parliament, made and passed, &c. to adjudge and determine when the Highways leading to, &c. are sufficiently repaired and amended, whereupon the Tolls therefore appointed, on Payment of the Money borrowed on the Credit of the Act, with the Interest and the Charges of passing the same, are to cease: We the underwritten Justices do, by Virtue of the said Power and on due Certificate thereof, hereby adjudge, that the said Highways leading to, &c. are sufficiently amended and repaired as they ought to be, and that the said Toll ought immediately to cease and determine, upon paying of the Money borrowed on the said Act with the Interest. Given, &c.

Sca-

Scavengers.

A Warrant to levy Ten Pounds by Distress and Sale of the Goods of one refusing to take on him the Office of Scavenger; being duly chosen and confirmed by two Justices, &c.

2 W. & M.
c. 8.

38. Middlesex, **F**Orasmuch as it hath been duly proved before me, this present Day, that R. G. of your Parish, Grocer, hath refused to take upon him, and execute the Office of Scavenger of the said Parish for the Year ensuing, within seven Days next after he was legally chosen and appointed to serve in that Office, and thereupon confirmed by two Justices of Peace within that Jurisdiction, according to the Form of the Statute in that Case made and provided, by Means whereof he hath forfeited the Sum of Ten Pounds: These are therefore (in his Majesty's Name) to charge and command you, that you, some, or one of you, do forthwith, upon Sight hereof, levy the said Sum of Ten Pounds, so by the said R. G. forfeited for the Offence aforesaid, according to the said Statute, by Distress and Sale of his Goods and Chattels (rendering the Overplus unto the said R. G. if any such shall remain after your reasonable Charges in and about the said Distress and Sale are first deducted) the said Monies so levied by you to be paid to the Surveyors of the Highways of your said Parish, to be by them employed towards amending the same, according to the Directions of the Statute aforesaid. Whereof fail not, &c. Given, &c.

A Warrant against a Scavenger, who collected the Monies the Year preceding, for refusing to account and pay over the Monies in his Hands to the present Scavengers.

To all Constables, &c.

2 W. & M.
c. 8. Two Ju-
stices.

39. Middlesex, **F**Orasmuch as A. B. late one of the Scavengers of the Parish of L. was duly summoned to appear before us on the Day of Instant, at the Sign of the Mitre in, &c. and to bring with him a true Account in Writing of all such Monies as were by him received the last Year, towards the cleaning the Streets of the said Parish; as also the Monies then remaining in his Hands, to be paid over to the present Scavengers of the said Parish,

Parish, according to the Directions of a late Act of Parliament in that Case made and provided: And whereas the said A. B. did refuse to come before us at the Time and Place above-mentioned: These are therefore (in his Majesty's Name) to command you, and every of you, to apprehend the said A. B. and bring him before us, to be dealt with according to Law. Given, &c.

The Form of a Presentment, on View of a Justice of Peace, of a paved Street out of Repair.

40. Middlesex, **J.** S. Esquire, one of the Justices of the Lord the King, assigned to keep the Peace in the County of Middlesex, as also to hear and determine divers Felonies, Trespasses, and other Misdemeanors in the said County perpetrated, by Virtue of the Statute in such Case made and provided, upon his own View presented, that a certain Street and common Highway, called *lying and being in the Parish of* *in the County aforesaid, and leading from a certain Place, called* *in the same County, and containing in* *Length* *and in Breadth*

on the *Day of*
and *Year of the Reign of*
now King of Great Britain, &c. and
continually afterwards, until *in the Year*
aforesaid, was and still is very ruinous, broken, and in such Decay, for Default of due Repair and Amendment of the same, that the liege Subjects of the said Lord the King could not, during the whole Time aforesaid, and cannot yet pass, repass, ride, or travel through, or along the said Street and common Highway with their Coaches, Carts and Carriages, as they used and ought to do, to the great Damage and common Nuisance of all the liege Subjects of the Lord the King, going, returning, passing, riding, or travelling through or along the said Street and common Highway, and against the Peace of the said Lord the King, his Crown and Dignity: And that R. N. late of the Parish aforesaid in the County aforesaid, Esquire, P. L. late of the same, Esquire, R. N. late of the same, Gentleman, and D. H. late of the same, Gentleman, ought, by Reason of the Tenure, Possession, and inhabiting of their Houses adjoining to the said Street and Highway, to repair and amend the said common Street and Highway, when and so often as should be necessary. In Witness whereof the aforesaid J. S. the aforesaid Justice of the Peace hath set his Seal to this present Record, the said *Day* of *in the* *Year aforesaid.*

An

An Affidavit to convict a Scavenger for not bringing Carts, &c. to carry away the Dirt, &c.

41. Middl. **A.** ^{B.} of the Parish of
to wit. within the County of Middle-
sex aforesaid, Labourer, maketh Oath that and
who are the Scavengers for this present
Year of in the Parish of aforesaid.
said, did not, neither did any Raker or other Officer on the
Day of this Instant (the
same being no Sunday or Holiday) bring or cause to be brought
into a Street called Street, which is in the
said any Cart, Dungpot, or other fitting Car-
riage, and there give Notice in such Sort and Manner, that all
Persons concerned might bring forth their respective Dust, Dirt,
Ashes, Filth and Soil to them, as by Law is required, although
such Carts and Carriages might there pass. And this Deponent
further saith, that neither of the said
the Scavengers, nor any Raker or other Officer
did on the Day of this Instant
carry or cause to be carried away the Dust, Dirt, Ashes, Filth
and Soil from Street in
aforesaid.

A Summons on the foregoing Affidavit.

To Scavengers for this present Year of
in the Parish of
within the County of Middlesex.

42. Middl. **Y**OU are hereby required personally to be and
to wit. appear before me one of his Majesty's Justices
of the Peace for the said County, at my House in
Street in the said Parish, on next, at
o'Clock in the Forenoon, to shew Cause why
you should not be convicted for not bringing or causing to be
brought on the Day of this Instant
(the same being no Sunday or Holiday) into a Street called
Street, which is in the said
any Cart, Dungpot, or other fitting Carriage, and
not giving Notice in such Manner, that all Persons concerned
might bring forth their respective Dust, Dirt, Ashes, Filth and
Soil to them, as by Law is required; and also for not sweeping
and carrying or causing to be carried away the Dust, Dirt, Ashes,
Filth

Filth or Soil from

Street aforesaid, on the said

Day of this Instant

dated this 22nd of November 1739 Day of, &c.

A Warrant to demand the Penalty of the said Scavengers.

To the Constable and Headborough of the Parish of
within the County of Middlesex, and to all others whom
these may concern.

43. Middl. **W** Hereat *Scavengers*
to wit. for this present Year 1739, in the Parish
of in the County of Middlesex aforesaid, have been this Day convicted before me one of his Majesty's
Justices of the Peace for the said County of Middlesex, as well
by their own Confessions, as upon the Oath of
being a credible Witness, for that they the said
the said Scavengers, did not, neither did
either of them, nor any Raker or other Officer on their Behalf,
(the same being no Sunday or
Holyday) bring or cause to be brought any Cart, Dungpo, or
other fitting Carriage, into a Street called
which is in the said and in the said Parish of
in the said County of Middlesex, (and
where such Carts and Carriages can pass) nor did by a Bell,
Horn, Clapper or otherwise, make a distinct and loud Noise, and
give Notice to the Inhabitants of the said
Street of their coming, nor did abide there a convenient Time,
in such Sort that all Persons concerned might bring forth their
respective Dust, Dirt, Ashes, Filth and Soil to any Cart or Car-
riage so staying as aforesaid, nor did they or any of them rake,
sweep up into Heaps, and carry or cause to be carried away the
same, or any Part thereof, as required by the Statute in that
Case made and provided, for which Offence they the said
have forfeited the
Sum of each and respectively.

These are therefore in his Majesty's Name, and in Pursuance
of the said Statute in that Behalf made, to require you forthwith
to demand of each of them the said Penalty by Writing left at
the respective Houses or Dwelling-Places of the said

and within the Space of six Days
after the Date hereof, to certify to me what you shall have done
in the Premises, to the End I may further proceed therein as the
Law direct: and hereof fail not. Given under my Hand and
Seal, this

Day of

1739.

Y

A War-

A Warrant to levy the Penalty upon a Scavenger.

To the Constable and Headborough of the Parish of _____
in the County of *Middlesex*, and all others whom it
may concern.

44. Middl. **W** Hereas _____
to wit. _____ one of the Scavengers for this present Year
1739, of the Parish of _____ in
the said County of *Middlesex*, stands convicted before me one of
his Majesty's Justices of the Peace for the said County, upon the
Oath of _____ (being a credible Witness for
that the said _____ the said Scavenger, did not,
neither did any Raker or other Officer, on his Behalf, on the

Day of this Instant
(the same being no Sunday or Holiday) bring or cause to be
brought into a Street, called _____ Street, which is in the
said Parish of _____ any Cart, Dungpot, or other
fitting Carriage, alibough such Carts and Carriages might there
pass, nor did by Bell, Horn, Clapper, or otherwise, make a
distinct and loud Noise, and give Notice to the Inhabitants of
the said Street of his coming, nor did he abide there a convenient
Time, in such Sort that all Persons concerned might bring forth
their respective Dust, Dirt, Ashes, Filth and Soil, nor did he
the said Scavenger, or any Raker or other Officer on his Behalf,
sweep, rake up into Heaps, carry or cause to be carried away on
the said _____ Day of this Instant

any Dust, Dirt, Ashes, Filth and Soil, out of
Street aforesaid, as by Law he ought, and for which Offence he
the said _____ hath forfeited the Sum of

to be levied, employed, and disposed of, as the Sta-
tute in that Case directs. And whereas he the said
has been duly summoned before me, to shew Cause why he should
not be convicted for his said Default, and hath not shewn suffi-
cient Cause: And whereas I granted my Warrant dated the

Instant, directed to the Constable
and Headborough of the said Parish of _____
demand of him the said _____ Scavenger, and
aforesaid, the Sum of _____ by Writing, to be

left at the House or Dwelling-place of the said
and within the Space of six Days from the Date thereof, to
certify to me what should have been done in the Premises. And
whereas _____ one of the Constables of the

said Parish of _____ to whom the said Warrant
was delivered to be executed, did on the

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me, that
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Istant make a Return of the said Warrant, and certified unto me, that in Pursuance of the above-mentioned Warrant, he had made a Demand of him the said in such Manner as is directed in the said Warrant, and that he hath not received from him the said the said Forfeiture or Sum of although it is more than six Days since he made such Demand as aforesaid. These are therefore in his Majesty's Name to require you, some or one of you forthwith, on Sight hereof, to levy the said Sum of

by Distress and Sale of the Goods and Chattels of him the said rendering to him the Overplus (if any be) and that you apply the same to and for such Uses, and in such Manner as the Statute directs; and if no such Distress can be had or taken, or Satisfaction had, That then you certify the same to me, to the End I may further proceed therein as to Law doth appertain. Given under my Hand and Seal, &c.

A Warrant to levy the Scavenger's Rate or Tax.

To the Constables, Headboroughs and Scavengers of the Parish of in the County of Middlesex, and to each and every of them.

45. Middl. to wit.

W

Hereas

an Inhabitant and Occupier of an House in Street, in the said Parish was duly rated and assessed the towards the Payment of the Scavengers or Rakers in the said Parish, for cleansing the Streets, Lanes, Courts and Alleys therein, and taking or causing to be taken, and carried away therefrom the Dust, Dirt, Ashes, Filth and Soil for this present Year 1739, and has neglected and refused to pay the said Sum of rated upon

although the same has been demanded of him by the Scavengers of the said Parish at House, as appears upon Oath unto us, two of his Majesty's Justices of the Peace for the said County, whereof one is of the Quorum. These are therefore in his Majesty's Name to require you, or some of you, forthwith to levy the said Sum of by Distress and Sale of the Goods and Chattels of the said

rendering to him the Overplus (if any be) and if no such Distress can be had or taken, that then you certify the same to us, to the End we may further proceed therein, as to Law doth appertain. Given under our Hands and Seals, this

Day of

1739,

A Warrant of Distress against Persons refusing to put out Lights.

To the Constable and Headborough of the Parish of
within the said Liberty and
County.

46. Middl. and Westm. **W** Hereas in and by an Act of Parliament made in the second Year of the Reign of the late King William and Queen Mary, it is among other Things enacted, That all and every Householder within any of the Parishes, Places or Precincts in the Counties of Middlesex and Surry, and City and Liberty of Westminster, comprised within the weekly Bills of Mortality, whose House adjoins unto, or is near the Street, from Michaelmas unto our Lady-Day yearly, shall every Night set or hang out Candles or Lights in Lanthorns, on the Outside of the House next the Streets, to enlighten the same for Conveniency of Passengers from Time to Time, as it shall grow dark, until Twelve o'Clock at Night, upon Pain to forfeit the Sum of two Shillings for every Default (excepting such Person or Persons as shall agree to make Use of Lamps of any Sort, to be placed at such Distances in the Street, as shall be approved of by two or more Justices of the Peace, as by the said Act may appear.) And whereas it has been duly proved upon Oath unto us his Majesty's Justices of the Peace for this County, City and Liberty, that A. B. C. D. and E. F.

not having agreed, nor either of them having agreed to make Use of any Lamps placed at such Distance (approved by two Justices of the Peace) did not, neither any or either of them, in the before-mentioned, according to the said Act of Parliament, hang or put out at the Outside of their respective Dwelling-houses or Places of Abode in the same being within the weekly Bills of Mortality, and in the Parish of within the said Liberty, any Candles or Lights in Lanthorns, or any Lights conformable to the said Statutes; for which several Offences they the said have respectively, and each of them hath forfeited the Sum of viz. two Shillings for each Neglect or Default; one Moiety thereof to the Use of the Poor of the said Parish, and the Remainder to S. M. the former: And whereas they the said

have been duly summoned before us, to shew Cause why they and each

Chap.

each of the faults, and them by or shewn of them pose. The ance of t with to a

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47. Mid to wit, siding w in the s (intituled vide the End of

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Parish Law.

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each of them should not be convicted for their said several Defaults, and the said respective Sums should not be levied upon them by Distress, as the Law directs, and have not appeared or shewn sufficient Cause, altho' Service of Summons upon each of them has been duly proved upon Oath before us for that Purpose. These are therefore in his Majesty's Name, and in Pursuance of the said Statute, to require you, some or one of you, forthwith to demand of

of lawful Money of Great Britain; and in Case of Refusal or Nonpayment thereof within six Days after Demand or Notice in Writing to be left by you, some or one of you, at the respective Houses or Dwelling-Places of them the said

That then you levy the said respective Sums of by Distress and Sale of the Goods and Chattels of them the said respectively, rendering to them and each of them the Overplus (if any be) and for Default of Payment, and Want of such Distress and Satisfaction as aforesaid, that then you certify the same unto us, to the End we may further proceed therein as to Law doth appertain; and hereof fail not at your Perils. Given under our Hands and Seals, this Day of

A Certificate of Justices for several Persons agreeing together to put up a Lamp or Lamps.

47. Middlesex, **W**E, two of his Majesty's Justices of the Peace for the County of Middlesex, residing within the Parish of in the said County, have, pursuant to an Act of Parliament, (intituled, An Act for Paving and Cleansing the Streets, &c.) (vide the Act) viewed a Lamp situated at the End of Street in the said Parish of which said Lamp is maintained at the Charge of

Inhabitants of the said Street, and of the Parish of which we do approve and allow to be at a proper Distance, and to be a sufficient and good Light for their Houses. Given under our Hands, this Day of 1739.

See 9 G. 2. c. 20. which has quite alter'd this Matter in the City and Liberties of London.

48. By Stat. 14 Geo. 2. c. 33. after 24 June 1742, Majority of Justices at General or Quarter-Sessions, may purchase Land (not exceeding an Acre) near a County Bridge, to enlarge or rebuild the same; to be paid for by the County Treasurer out of any Money to be raised by Stat. 12 Geo. 2. for more easy assessing, &c. County Rates, by Orders under Hands and Seals of Majority of the Justices.

CHAP. LXI.

Of Constables.

Of the Derivation of the Word Constable.

1. **A**ltho', strictly speaking, a Constable may be thought rather a Peace than a Parish Officer; yet in Regard he is in many Cases concerned in Parish Business, we cannot omit saying something concerning him in this Place.

2. There are three different Opinions among Antiquaries and Etymologists, concerning the Derivation of the Word Constable. The first is, that it is derived from the two Latin Words (*Comes Stabuli*) but this seems more applicable to the Earl Marshal, or Master of the Horse, than to the Constable; for this Dignity originally was to take Care of the King's Stables, and therefore this Derivation is deservedly rejected. The second, and to which Mr. Lambard in his Treatise of Constables seems to adhere, is, that it is derived from the two old Saxon Words (*Cunninge*, *Coninge*, or *Cinge*, signifying a Prince or King, and *Stable*, or rather *Staple*, denoting a Prop or Stay, and so *Coningstable*, by Contraction Constable) is as much as to say, the Prop or Stay of the King: But this Opinion too is rejected by many, as not so well agreeing with his Office in ancient Times. The third Opinion is, that the Word Constable is derived from the two old Saxon or German Words (*Cuninge*, *Cuninge*, or *Cinge*, signifying a Prince or King, and *Stapelen*, which signifies to gather together) and this Conjecture seems the most probable; because it agrees the best with the Office, not only of Constable, but also with that of Borsholder, Borrowhead or Headborough, Thirdborough, Chief Pledge or Tithingman.

3. For the better Illustration of which it is to be observed, and it is allowed by all, as well as Mr. Lambard, that by the ancient Laws of this Realm, before the Coming of King William the Conqueror, it was ordained for the better Preservation of the Peace, preventing Thefts, and repressing Malefactors, that all the Inhabitants should cast themselves into distinct Societies of ten Men and their respective Families in a Company, and

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and that every of these ten Men should be Surety and Pledge for the good Behaviour of the rest; so that if any one of them committed any Crime they should see him forthcoming, or in Default thereof be amerced, and thence these several Societies come in some Places to be called (even at this Day) Boroughs, or rather *Boreis*, from the old Word *Borras*, signifying Pledges or Sureties, and Borsholder from *Borae* and *Ealder*, signifying the Chief, the Head, or the Elder. And in other Places, (from the Number of ten Families thus associated) Tithings, which is confirmed by what the late Bishop *Kennet* tells us of Tithingmen. In the *Saxon* Times (says he) for the better Conservation of Peace, and for more easy Administration of Justice, every Hundred was divided into ten Districts or Tithings, each Tithing made up of ten Friborgs, each Friborg of ten Families, and within every such Tithing [*statuerunt Jusficiarios super quosdam decem Friborgos quos Decanos possumus appellare, Anglice vero sic Me nob, i. e. caput de decem*] which Tithing-Men or civil Deans, were to examine and determine all lesser Causes between Villages and Neighbours; but to refer all greater Matters to the Superior Courts, which had a Jurisdiction over the whole Hundred. *Kennet's Parochial Antiquities*, p. 633.

4. In *Kent* these Officers are called Borsholders from *Borae* a Pledge, and *Ealder* or *Elder*, signifying the Chief, the Head, or the Elder; in *Hampshire*, and all the Western Parts, Tithing-Men; and their Divisions of Parishes, Tithings; in *Warwickshire* and some others, where every third Borough hath a Constable, there the Officers of the other two are called Third-boroughs; in *Suffex* the Hundreds are called Rapes, and in the North Ridings, Wapentakes. In *England* there are 40 Counties besides 12 in *Wales*.

5. Now among several other good Orders mentioned by *Mr. Lambard*, which were observed in these Tithings, there was one, which was, that once every Year every one of these Pledges were presented by their Chief Pledge, at a General Assembly for that Purpose, that every Man of twelve Years of Age might be sworn to the King, which we yet (in Remembrance thereof) do call the View of Frank-Pledge, or the Leet-Court. And as it was the Business of the Borsholder or Tithing-Man, to present all the Pledges or Men in his Borough or Tithing; so it is more than probable, that the Constable, on Behalf of the King, had the Care of gathering together and bringing forth, as well as of keeping the Peace among all the Pledges within such, or perhaps a larger Division; and this seems not only to give the properest Derivation both of the Office and Name of a Constable, but also the Reason of his Superiority over an Headborough or Tithingman. And I am the more confirmed in this Opinion, because the great Lord

Bacon in his View of the Law, p. 5 & 6. tells us, that in antient Time, High Constables of Hundreds and petty Constables in every Town were yearly appointed by the Sheriff in his Turn, and were there sworn; and 'tis allowed by all, that the Leets, where at this Day the Constables are regularly chose and sworn, were originally derived out of the Sheriff's Turn. And the same great Man, in his Office of Constables, tells us, that one End of the Institution of the Leet, was to take the antient Oath of Allegiance of all Males above the Age of 12 Years; so that in all Probability the High Constables were at first appointed by the Sheriff in his Turn; but as the inferior Leets were branch'd out from the Sheriff's Turn, the Constables were in After times chose and sworn in them, to gather together and bring all the Pledges to take the Oath of Allegiance, and to keep the Peace among them; and also to present all Matters of Disturbance and Nuisance of the Peace, which they in Respect of their Office are presumed to have best and most particular Knowledge of.

6. And Mr. *Lambard* tells us, that so late as about the Beginning of the Reign of King *Edward* the Third, Petty Constables were devised in Towns and Parishes for the Aid of the Constables of the Hundred; so of later Times also Borsholders, Tithing-Men, Headboroughs, and such like, have been used as Petty Constables within their own Boroughs and Tithings; and yet not so universally, but that some of them have at this Day none other but their old Office. For in some of the Western Parts of *England*, you shall see that where there are many Tithing Men in one Parish, there only one of them is a Petty Constable for the King, and the rest do serve but as the antient Tithing Men did; and in such Case, where there are two or more Tithing Men; and one of them is chosen at the Leet, to execute the Office of a Constable, and the rest of them have been used Time out of Mind, to do nothing about the Office of the Constable, but to do other Things; in such Case the Custom of the Place may and must be continued, and such Tithing-Men shall not be compelled to do more than by Custom they have used to do otherwise; and in all other Places all these Officers are comprehended under this Word Constable, and all these Offices are contained within this Office.

7. And thus much of the Etymology or Derivation of the Word *Constable*. I shall proceed to treat next, *First*, Of the Manner of their Election. *Secondly*, Of their Office and Duty in general. And, *Thirdly*, conclude with those Parts of their Office and Duty, which relate to Parish Business. *First*, Of the Manner of their Election.

8. Of Constables there are two Sorts (as hath been intimated) High Constables, and Petty Constables; the first are for the whole Hundred; the last only for some particular Parish, Village,

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lage, Hamlet, Tithing, Borough or Liberty. He is an Officer but for his own particular Vill; and tho' he may execute Warrants in any other Part of the County, if directed to him by Name, (as any other Person may) yet he is not compellable to do it: Though the contrary is practised in *London* by Custom. *Comber. 446.* My Lord *Bacon* tells us, that tho' the High Constable's Authority and Jurisdiction hath the more ample Circuit, he being over the Hundred, and the Petty Constable over the Village; yet he did not find the Petty Constable was subordinate to the High Constable to be ordered by him; and therefore he doubted the High Constable was not *ab Origine*; but that when the Business of the Country increased, and the Authority of the Justices of Peace was enlarged by diverse Statutes; then for Conveniency's Sake the Office of High Constable grew in Use for the receiving the Commands and Precepts from the Justices of Peace, and the distributing of them to the Petty Constables, Headboroughs, Tithing-Men, &c. and in Token of this, the Election of the High Constables in most Parts of the Kingdom, is by the Appointment of the Justices of Peace; whereas the Election of Petty Constable is by the People.

9. The Petty Constables, Headboroughs, Tithing Men, &c. are not subordinate to the High Constable in any Thing that proceeds from his own Authority merely; tho' his Power is of a larger Extent than theirs, as has been said; and in Places where there are no Constables but Tithing-Men, &c. there the Authority of such Parish Officer equals that of the Constable within his Limits; for he is in Effect, the Constable of the Place. But Headboroughs, Tithing-Men, &c. appointed in a Town or Parish, having also a Constable, cannot principally concern themselves in any Matter, the Constables being Head Officers, though in the Absence of the Constable, they are chiefly to attend the Service; and there are many Things which a Constable has Power to do, that Headboroughs and Tithing-Men cannot intermeddle with. *Dalt. 3.*

10. High Constables are chosen either at the Quarter-Sessions or in the Court-Leet, and where the latter is warranted by Custom, the Justices of Peace cannot interpose, unless it be on a Neglect of keeping such Court, or in chusing them; when the Justices, at their Quarter Sessions, may appoint and swear a High Constable, or issue their Warrant to do it out of the Sessions: But in Case of Refusal to serve the Office, Death, or Removal, a Justice of Peace may chuse and swear another, though this is generally done by two Justices; and the Person chosen is to continue in the Office 'till the next Court-Leet or the Sessions; and then the Steward or Justice may either approve him, or appoint another to continue in for one Year. If he is present when chosen, and refuses to take upon him the

Salk. 175,

176.

Where High Constables are chosen.

the Office, the Steward may fine him (Justices of Peace may likewise bind him over to the Assizes or Sessions where he may be indicted and fined). If he does not appear, the Homage are to present his Refusal at the next Court, whereupon he shall be amerced; and if he, being present, accept the Office, he is to be forthwith sworn in the Leet. If absent, upon Notice given by the Steward, he is to take the Oath before a Justice. *Dalt.* 58, &c. Of common Right, the Homage in Courts Leet shall elect the Constable; and this is the constant Practice in *Middlesex.* *Per Cur', Fletcher v. Ingram,* 1 *Ld. Raym.* 70.

Who are exempted from being chose Constable, &c.

11. A Person chosen Constable by the Leet, or, in Default of the Leet, appointed by two Justices, by Force of *Stat.* 13 & 14. c. 2. ought to be summoned before a Justice to take the Oaths, before he can be guilty of any Offence, &c. *Comber,* 328, 329. Sometimes the Steward, and sometimes the Jury claim the Nomination, &c. *Ibid.* 351. The Sessions may remove High Constables and Petty Constables, the Justices there being the best Judges in these Cases. *Reg v. White,* 1 *Salk.* 150. Justices of the Peace, Clergymen, Attornies, Lawyers, Physicians, Ideots, Poor, Old, and sick Persons, are exempted from being chosen Constables. But Tenants in Ancient Demesne are not. 1 *Vent.* 344. *Mich.* 21 *Car.* 2. A Corporation of common Right cannot chuse a Constable: But they may by Custom; and then they must prescribe for it. *Rex v. Barnard,* 2 *Salk.* 502. A Village and a Constable are Correlatives; but a Hamlet has no Constable. *Chorley's Case,* 1 *Salk.* 175, 176. No Man that keeps a Publick House ought to be a Constable. *Per Holt, ibid.* But if this should be a Rule, 'twould be hard upon the other Inhabitants in many Places.

12. When Constables are appointed, the Steward of the Court Leet, or the Justices, administer the following Oath.

The Oath of Constables.

YOU shall well and truly serve our Sovereign Lord the King, and the Lord of this Leet, (if appointed in the Court-Leet) in the Office of a Constable, in and for the Hundred of A. or Parish, of, &c. until you be thereof discharged according to due Course of Law, or for the Year ensuing, and until another shall be sworn in your Room, you shall from Time to Time well and truly do and execute all Things belonging to the said Office, according to the best of your Knowledge.

So help you God.

N. B. The Oaths of Allegiance and Supremacy appointed by *Stat.* 25 *Car.* 2. cap. 2. do not extend to Constables, Church-wardens, &c.

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13. Where Neglects or Miscarriages are either in keeping Court-Leets, or in chusing Constables, there the Justices at their Quarter-Sessions, or the major Part of them, may appoint and swear a High Constable; and this is the usual Course at this Time; but in Case of Refusal, Death, or Removal, one Justice of the Peace may choose and swear another. 11 *Car. 1. B. R. Trin. 34 Car. 2. Jones's Rep. 212.* 'Tis true, they may be sworn at any other Time by a Warrant from the Sessions, and they may also be chosen out of the Sessions by the greater Number of Justices of a Division; but this is not usual. 'Tis said the Sessions can appoint a Constable where none before. *Black. 87.*

On Neglects in Leets, Sessions appoint and swear Constables, &c.

14. As for being qualify'd for this Office, they ought to be honest, understanding and able Men, and to be Men of Substance, and not of the meaner Sort, and Resident where chosen; and if they are not duly qualify'd, two Justices, upon Complaint, may remove them, and appoint others. And though formerly it was not, yet now 'tis held, that a Custom for every Inhabitant to serve by Turns is good; for if it happen on a Woman, she may hire one to serve. *Sid. 355.*

The Qualifications of a Constable.

15. Dissenters chosen Constables may make Deputies for the Execution of the Office, by 1 *Wil. & Mar. cap. 11.* and other Persons may make Deputies; though formerly it was doubted; but they must answer for their Miscarriages, unless such Deputies are sworn and allowed by the Court. *Moor 845. 3 Bulst. 77. 1 Rolls 274.*

One chosen Constable may make a Deputy.

16. Two Justices (*Quorum unus*) may appoint High Constables in *Wales*, by *Stat. 34 Hen. 8. cap. 26.* If a Constable, after he is duly chose, refuses to serve, Justices may bind him over to the Assizes or Sessions, and there he may be indicted and fined; but you must alledge the Place where he was required to take the Oath, and before whom he refused to be sworn, and not *ad Sessionem* generally; otherwise it may be quashed. *Styl. 124. 1 Keb. 418. 1 Mod. 24, 13. Allen 78. 2 Roll. Rep. 78. 3 Saund. 291. Sid. 272. Styl. 394. Note;* A Man is to serve the Office of Constable, in Respect of his personal Abode, and not in Respect of his Lands.

Penalty on Constable refusing to serve, &c.

17. A Person disobeying the Order of Justices for taking the Office of Constable upon him, was committed to Gaol by the Justices at the Sessions; the Person disobeying alledged, that he was not within the Liberty; and it was adjudged, that the Commitment was wrong; for he ought to have been indicted upon his Refusal; and if he was found to be within the Liberty, they might then assess a Fine, and commit him 'till Payment. *Cro. Car. 596. 15 Car. 1. B. R. Crawley's Case.* Where a Leet is orderly kept, and there is a due Election of this Officer from Time to Time, and no Neglect or Miscarriage therein, there the Justices are not, in or out of their

Case about a Constable.

their Sessions, to meddle with the Choice or Removal of a Constable; and if they should intermeddle in this Case, or remove a Constable settled by the Leet according to the Custom of the Place, the Leet may put him in again, and the K. B. must decide the Difference. *Trin. 9 Jac. 1. B. R. Styl. Rep. 362. 1 Bulst. 174.* But it is agreed, that where there is a Neglect or Miscarriage in a Court-Leet, touching the Making a Constable, there the Sessions may interpose and supply it. The Lord also may lose his Leet by this Neglect. *Styl. 71. Mich. 22 Car. B. R.* And the Justices also are to make the High Constable of Hundreds, where there is not a Leet for the Hundred that hath constantly done it. *Trin. 9 Jac. 1. B. R.* Constables may make their Deputies within the Statute 7 Jac. 1. c. 5. *Phelp's Case, Mich. 13 Jac. 1. B. R. Philips con. Winchcomb. Moor pa. 845. 3 Bulst. 77.*

18. Antiently both High Constables and Petty Constables were appointed and sworn by the Sheriff in his Turn; and if a Constable died, his Place was to be supply'd by the Leet, or Justices of Peace. But now by the Stat. of 14 Car. 2. cap. 12. in Case of the Death of Constables, or their Removal out of the Parish, two Justices of the Peace may swear new ones, they to continue until the next Leet, or until the Sessions, where the same shall be either approved or others appointed; and if for Want of a Leet they hold over a Year, they must be discharged, and others put in their Places. By the same Statute, Constables, &c. being out of Purse, may make Rates upon the Occupiers of Lands, Inhabitants and others chargeable; which being confirmed by the Justices, may be levy'd by Distress by the Warrant of two Justices, &c.

19. The Constable is an Officer of the Court of Sessions, over whom they have Power, therefore if they order him to restore Money, Plate, &c. which he took as a Security from the reputed Father of a Bastard-Child, he must obey; and such Father, &c. shall not be driven to the Expence and Delay of bringing his Action. *Comber. 204.* A Constable may be presented for refusing to be sworn a Constable. *Mod. Rep. 24.* One may be indicted, who being chosen Constable, and warned before a Justice of Peace to take his Oath, and voluntarily neglects or refuses to take it. *Allen 78. 1 Roll's Abridgment 591. Moor 845. Cro. Car. 585.* He that is sworn, though hired, is the Constable. *1 Sid. 355.* An Alderman of London chosen Constable at a Leet in *Essex* discharged upon a *Certiorari*, because he is bound as Alderman to be present in London for the Government of the City. *Trin. 16 Car. 1. Jones's Rep. 462.* Alderman *Adby's Case. S. C. Cro. Car. 585. pl. 3.* T. was indicted for not going before a Justice of Peace to take the Oath of an Headborough to which he was chosen at a Leet, and the Indictment was quashed; because it did

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did not appear, that any Notice was given him to go before the Justice. *Trin. 24 Car. 1. B. R. Style 124. Rex ver. Trigg.* When a Person is summoned, the Summons ought to shew for what Cause he is to appear. *Mod. Cases in Law and Equity 3 & 4. The King v. Glegg.* S. was presented at the Leet to be a Constable, and the Steward refused to swear him; upon that, the Justices at Sessions made an Order, that S. should serve the Office, and swore him accordingly. On a *Certiorari* to remove this Order, Exception was taken, because the Justices had intermeddled with a Thing which was not within their Cognizance; for 'twas said that the Appointment of a Constable belongs to the Leet, and the Lord of the Leet (at the Peril of the Forfeiture of his Leet) ought to take Care that a Constable be there chosen, and that he may by his Steward; but the Exception was disallowed by the whole Court, for the Election of a Constable properly belongs to the Homage. And although the Justices of Peace have not originally the Making of a Constable, yet that is a Matter of the Peace which is within their Jurisdiction, and they may examine this Matter in their Sessions. And as to the Swearing of the said Constable, any single Justice of Peace may do that; and the Order was confirmed. *Trin. 34 Car. 2. B. R. Jones's Rep. 212. Rex v. Stevens.*

20. But there being some Variation in the Manner of Election, and the Oath and Office of Constables in the City of London, with respect to other Constables appointed in the Country; it may not be improper to mention some Things relating to them. And first, the City is divided into twenty-six Wards, and every Ward into the like Number of Precincts, over each of which is a proper Constable: All Constables ought to be Freemen of the City. They are nominated by the Inhabitants of the Precinct on St. Thomas's Day, and confirmed, or otherwise, at the Court or Wardmote; and after they are confirmed, they are sworn in their Offices at a Court of Aldermen on the next Monday after Twelfth-Day. *Cal. Rep. 129.*

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21. The Substance of the Oath is as follows:

TO keep the King's Peace to the utmost of their Power, to arrest Affrayers, Rioters, and such as make Contests to the Breach of the Peace, and to lead them to the House of Correction, or Compter of one of the Sheriffs; and in Case of Resistance, to make Outcry on them, and pursue them from Street to Street, and from Ward to Ward, till they are arrested. To search for common Nuisances in their respective Wards (being required by Scavengers, &c.) and upon Request, to assist the Beadle
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and Raker in collecting their Salaries and Quarteridge; to present to the Mayor, and Ministers of the City, Defaults relating to the Ordinances of the City; to certify in the Mayor's Court once a Month, the Names and Surnames of all Freeman deceased, and also of the Children of such Freeman, being Orphans.

22. And by the Articles of the Wardmote Inquest, Constables are to certify the Name, Surname, Place of Dwelling, Profession and Trade, of every Person who shall newly come to inhabit in their Precincts, and to keep a Roll thereof. In order to this, they are to make Inquiry at least once a Month, into what Persons are lately come to lodge and sojourn there; and if they find by their own Confessions or the Aldermen's Books, that such new Comers are ejected from any other Ward for bad Living, or any Misdemeanor, and refuse to find Sureties for their Good Behaviour, Warning is to be given to them and their Landlords that they depart; and on Refusal they may be imprisoned, and their Landlords fined a Year's Rent agreed for by such new Comers. *Calib. Rep. 138.* Constables in each Ward are to attend the Watch by Turns one every Night, and to go the Rounds, and with the Beadles every Night are to warn such Persons as are to serve upon the Watch in their several Precincts; and if they refuse to appear, the Constable may hire others in their Stead, and they shall pay the Constable according to the Custom of the City. The Common Council appoint the Watchmen. They are to certify to the Lord Mayor and Common Council of the City, the Names of all such Persons as shall interrupt or hinder them in the Discharge of their Offices.

23. These are the Articles of the Oath, and extraordinary Business of the Constables in London; to which I am to add, that a Constable of London has Power to execute Warrants, &c. throughout the whole City upon Occasion: And such as are sworn into the Office are obliged to place the King's Arms, and the Arms of the City over their Doors; and if they reside in Alleys, at the End of such Alleys towards the Street, to signify that a Constable lives there, and that they may be the more easily found when wanted.

24. J. S. living in London, and having a Place in the Custom-House in London, which required his daily Attendance there, was chosen Constable, and being confirmed at the Wardmote Inquest refused to be sworn, or to take on him the Office; for which being indicted at the Sessions, he moved the Court of Exchequer for an Injunction; and it was granted him; whereby he was, in regard of his daily Attendance on the King's Business, discharged from all Parish and Ward Offices. *Hil. 3 & 4 W. & M.* And so much for London Constables.

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25. Secondly, We shall next treat of the Office and Duty of Constables in general. And I shall first observe, that Part of their Office consists in Attendance on Justices of Peace, on Court-Leets, and on Coroners for executing of Warrants; they are likewise to attend upon Judges of Assize at the Gaol-Delivery, Justices at the General and Special Sessions, and other Meetings, to execute Warrants, and present Offences upon Oath, according to Articles exhibited, &c.

Constables are to attend Assizes and Sessions.

26. And they ought to return the Warrants to them directed; for a Constable was indicted for not returning a Warrant to him directed about Deer-stealing, though he is not named in the Stat. 3 & 4 W. & M. c. 10. which being removed into B. R. by *Certiorari*, it was resolved, that Constables are subordinate Officers to Justice, &c. and that where an Officer neglects his Duty, he is indictable for it at Common Law; and in this Case he ought to return his Warrant, or certify what he has done upon it, otherwise the Prosecutor cannot have the Effect of his Prosecution; and that though this Indictment concluded *contra pacem*, that did not hurt, although this was only a Non-feasance.

Ought to return the Warrants directed to them.

27. Actions brought against a Constable for any Thing done in the Execution of his Office, must be laid in the proper County where the Fact is supposed to be done, and he may plead the General Issue, and give the Special Matter in Evidence; and if the Plaintiff is nonsuited, or discontinued, or a Verdict for the Defendant, he shall have double Costs. 7 Ja. 1. c. 5. 21 Ja. 1. c. 12. Style 593.

Action against a Constable must be laid in proper County, &c.

28. If any one abuse or affront a Constable in the Execution of his Office, either by Word or Action, he may have him bound to the Good Behaviour for such his Offence, and fined before the Justices in their Sessions, as they see fit upon Proof. Fitz. 207. Grompton 135. Constables or other Officers may lay no Hands on two intending to fight till Weapons are drawn, or an Assault made. Lamb. 132. Constable hurt in parting an Affray, may have an Action against the Affrayer; so may any other Officer; but the Affrayer can have none against them. Lamb. *ibid.* Constable or Officer presented at Sessions for not endeavouring to part an Affray, being present, shall be heavily fined. Lamb. *ibid.* A Constable was bound to his Good Behaviour for arresting one on a Sunday in the Church-yard, after a *Certiorari* out of the King's Bench shewn to him. 1 Cro. 603. A Constable was indicted for refusing to pursue Hue and Cry for a Burglary. Cro. El. 654. Crowder's Case.

29. By Stat. 22 Car. 2. c. 8. Constable is to search if any one use any Measures but *Winchester*; and if he finds any unsealed Measure, to break the same. A Constable hath no Authority to commit any Person to Prison before he carries him before a Justice of Peace, unless for Breach of the Peace done

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in his Presence. *Savil's Rep.* 98. *B. R.* ordered an Action to be brought against a Constable for committing one to the Compter without a Cause. Several Constables and Parish Officers, who had refused to give Accounts upon Oath of the Names of the Inhabitants, House-keepers and Inmates in their several Parishes, were tried and fined 100 *l.* apiece, 8 *Sept.* 1684. A Constable has Power thro' the whole Parish and Division, 18 *Car.* 2. the Case of the Inhabitants of *Shadwell*.

Where the voluntary Escape is Felony in a Constable.

30. A Constable cannot justify the Breaking of any Man's House in the Night-time, unless it be in the Case of Felony. 1 *Bull.* 146. 5 *Co.* 92. *Seyman's Case*. If a Constable takes a Man that dangerously wounds another, and suffers him to escape, and then the Party wounded dieth; if it be voluntary, 'tis Felony in the Constable; if negligent only, yet will he be at least heavily fined. 11 *H.* 4. A Constable may break open a Door to take an Offender, where a Felony is committed, or dangerous Wound given. *H. P. C.* 93. If there be an actual Breach of the Peace, the Constable may imprison the Party in the Stocks, in the Gaol, or in his House, till he can bring him before a Justice of the Peace. *H. P. C.* 92. A Constable was indicted for refusing to execute a Justice of Peace his Warrant to apprehend one for a Contempt. *Hil.* 16 *Jac.* 1. 2 *Roll. Rep.* f. 78. The High Constable of the Hundred of *Wansstead* was discharged from being Collector of Money for the Poor of the Parish of *St. Peter Poor, London*, during his Office of Constable. *Jones's Rep.* 46. *Pasch.* 28 *Car.* 2. *B. R.*

In what Cases a Constable may justify the Breaking open Doors, &c.

31. In Cases of Treason, Felony, or Breach of the Peace, a Constable by Warrant from a Justice of Peace may break open a House to apprehend the Criminal; but he ought first to require the Opening the Doors, and to inform the Person for what Purpose he came thither, and he may justify the Detaining of an Offender for a Day without Warrant, by the Command of a Justice of Peace; and in conveying a Felon either before a Justice or to Gaol, he may lock him in the Stocks, if unruly, to prevent his Escape. *Dalt.* 204, 342.

32. If a Constable arrests a Felon, and carries him to the County Gaoler, but the Gaoler refuses the Prisoner, the Constable must not let him go; if he does, it is an Escape; adjudged *Hil.* 10 *H.* 4. A Constable may commit one for Breach of the Peace in his Presence, without carrying him before a Justice; and he may take up suspected Persons who walk in the Night, or keep suspicious Company. *Savil* 98. 13 *H.* 7.

A Constable must not Dispute but execute a Justice's Warrant, unless, &c.

33. A Constable must not dispute any Warrant sent to him by a Justice, but must execute the same; and if the Justice exceed his Authority, generally the Constable is excused; but if a Justice of Peace send his Warrant to be executed where he hath no Jurisdiction, or in a Matter wherein he is no legal Judge;

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Judge; if the Constable execute it, he may be punished. And so it is where the Warrant is mistaken in the Penalty, or commands the Constable to act out of his Precinct. *Dalt.* 437.

34. A Man may be bound to the Good Behaviour for any Abuse or Contempt to the Justice's Warrant, and be indicted and fined for it. And a Constable need not shew his Warrant; but if he acquaint the Party with the Contents of it, it is sufficient; but let him take Care how he apprehends a Person without a Warrant; for if he does, it will be false Imprisonment, tho' he obtained one afterwards. *Co.* 69. *Crompt.* 149.

The Penalty of abusing or contemning a Justice's Warrant, &c.

35. If it happen that there are two Persons of one Name, and the same Addition, and the Constable takes the wrong Person, 'tis no false Imprisonment; but if the Warrant be against a particular Person by Name, not the Offender, and he apprehends another who is really the Offender, such taking is wrongful, and the Party may have his Action of false Imprisonment, but he will recover but little Damages. *Dyer* 244. Where a Constable hath a Warrant to execute for Sureties of the Peace, and afterwards receives a *Superfedeas* from the Court of Chancery, or from another Justice, to discharge the Sureties; if he still insists upon the Party's finding Sureties, and he refuses, whereby he is detained, it is false Imprisonment.

Where an Action of false Imprisonment lies against a Constable, &c.

36. Constables are to cause Night-Watches to be set, which Watches are to be composed of the Inhabitants of the Parish, and to watch from Sun-set to Sun-rising; and if such Persons refuse they may be bound to the Good Behaviour by a Justice, on Complaint of the Constable. 13 *Ed.* 1. These Watchmen are to apprehend Night-walkers, suspected Persons, arrest Strangers, &c.

37. A Constable, by Warrant from a Justice of Peace, may sell the Goods of an Offender apprehended, to discharge the Expence of carrying him to Prison, such Goods being first appraised by some Inhabitants of the Place. 3 *Jac.* 1. c. 10. And in Case the Offender hath no Goods, then the Town where he was apprehended must be at this Expence, and the Constable, with three or four of the principal Inhabitants, may impose a Tax on every Inhabitant according to his Estate in Lands, and after the Rate of 5 *l.* for every hundred Pounds of the Personal Estate of a Tradesman; which being allowed by a Justice, the Constable, by Warrant, may levy it on those who refuse; and if the Inhabitants refuse to make a Tax, two Justices may by Warrant compel them to it. 3 *Jac.* 1. c. 10.

A Constable may sell Offender's Goods to pay for carrying him to Gaol.

38. In false Imprisonment the Defendant justified that the Plaintiff being in Presence of a Justice of Peace, the Justice not having Opportunity to examine him, commanded the Defendant to take him into Custody, and keep him safely till next Day; the which he being Constable did accordingly. And this was held a good Justification, without shewing what

A Justification of a Constable, &c.

Cause the Justice had to imprison him, and without shewing the Warrant, because it was done in the Presence of a Justice of Peace. *Broughton versus Mulsboe*, Trin. 37 El. *Moore's Rep.* 401.

Constable is the proper Officer to whom a Justice's Warrant is to be directed.

39. The Constable is the proper Officer to whom a Warrant is to be directed; but a Justice may direct it to the Sheriff, Constable, or other Officer; and in some Cases (by particular Directions of the Statute) to the Churchwardens and Overseers, &c. or to any other indifferent Person by Name, tho' he be no Officer: But there is this Difference in the Execution of it, that if it be executed by a sworn Officer, he need not shew his Warrant to the Person upon whom he serves it, though he ought to declare the Contents thereof; and if executed by a private Person, it must be produced if demanded, or else the Party may make Resistance, and need not obey it. *Br. Faux Impr.* 23. If a Statute directs a Thing to be done by a Constable, that will give him a Jurisdiction over the Limits of his Parish; So if a Justice of Peace directs his Warrant to a particular Constable, he may execute it out of his Parish: but where a Warrant is directed generally, to all Constables, &c. it shall be taken respectively to each of them within their several Districts, and not to the Constable of one Parish to take a Distress in another Parish. By *Holt C. J. Rex v. Chandler*, 1 *Ld. Raym.* 546.

40. A Warrant directed by the Justices of Peace to the Sheriff, he may by Word command his Under-Sheriff, Bailiff, Servant, or other known or sworn Officer to serve it without any Precept by Writing. *Br. Faux Impr.* 23. But if the Sheriff will command another Man, who is a Stranger, to serve it, he must deliver him a Precept in Writing; otherwise false Imprisonment will lie for the Arrest. *Ibid.*

Where a Person must serve the Warrant in Person, &c.

41. A Warrant directed by a Justice of Peace to any Person but the Sheriff, he to whom it is directed must serve it himself; for he can command no other to do it, neither by Word nor Writing, nor make any Deputy. *Dalt.* 578. c. 169. The Officer to whom the Warrant is directed and delivered, ought with all Speed and Secrecy to find out the Party, and execute the Warrant; and if it be a Warrant for the Peace or good Behaviour, or in any Case where the King is Party, the Officer may break open Doors to take the Offenders; and if resisted or assaulted, he may justify the Beating and Wounding, &c.

In what Cases one ought to obey an Arrest, &c. and when not.

42. If any Person says, *I arrest you in the King's Name*, &c. you ought to obey, though you know not whether he be an Officer or no; and if it appears afterwards that he was no legal Officer, an Action of false Imprisonment lies against him; but if you certainly know that the Person is no Officer, you are not obliged to obey. *Co. 9 Rep.* 69.

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43. Where a Warrant is granted to take *R. G.* the Son of *J. G.* and the Officer arrests *R. G.* the Son of *W. G.* though he is the Offender, yet it is false Imprisonment. *Dyer* 244.

44. If an Officer arrest a Person for the Peace, &c. without Warrant, and afterwards he receives a Warrant, yet this Arrest is wrongful, and false Imprisonment in the Officer. *Ibid.*

45. If after an Officer hath arrested a Person, he shall suffer the Person to go at large upon Promise to return or appear, &c. though he makes Default in his Appearance, yet the Officer cannot retake him by Virtue of his first Warrant, because it was once executed, and his going at large was with the Consent of the Officer; but if the Party makes his Escape without the Consent of the Officer, then upon fresh Suit the Officer may take him again and again, so often as he escapeth, although he were out of View, or that he fly into another Town or Country. *Co.* 58, 144.

When an Officer can retake his Prisoner, and when not.

46. Where an Officer has received a Warrant, he is bound to pursue the Effect of it in every Behalf, or otherwise his Warrant will not excuse for that which he does otherwise.

In what Cases a Constable is excused in obeying a Justice's Warrant, and in what not.

47. If a Justice of Peace exceeds his Authority in granting a Warrant, yet the Officer must execute it, and is indemnified in so doing; but if it be in a Case where he has no Jurisdiction, or in a Matter whereof he has no Conscience, the Officer ought not to execute such Warrant; for if he does, he may be punished; as if a poor's Rate is illegally assessed, and afterwards levied by a Warrant from the Justice, &c. this will not excuse the Churchwardens. *Cro. Car.* 394. *10 Co.* 76. And so note, that the Officer is bound to take Notice of the Authority and Jurisdiction of the Judge.

48. If any Man shall abuse the Justice of Peace his Warrant, as by throwing it into the Dirt, or treading it under his Feet, &c. or shall refuse to execute it, it shall be adjudged a Contempt of the King's Process, for which the Offender may be bound to his good Behaviour, and may also be indicted and fined. *Crompt.* 149.

49. Upon a Warrant for the Peace, the Officer ought first to require the Party to go before the Justice before he does arrest him. *Dalt.* 580. *c.* 170. If the Warrant is general, *viz.* to be brought before the Justice who grants it, or any other Justice, &c. the Constable, who is the Officer and Minister of Justice, may carry the Party before any Justice of that County, &c. because he is presumed to be an indifferent Person, and sworn to execute his Office duly; and therefore it is reasonable that the Election should be in him. *5 Rep.* 49. *Foster's Case.* But if the Warrant be to bring the Party before the same Justice of Peace that made it, in this Case the Officer must bring him before the same Justice, and cannot bring him before any other.

When a Constable may choose what Justice he will go before, and when not.

How a Mittimus ought to conclude, &c.

50. A *Mittimus* must not always conclude (until he be discharged by due Course of Law); for Offences at the Common Law it may be right to conclude so; but where it is for an Offence created by a particular Statute, it ought to conclude according to the Direction of that Statute.

51. Where Sureties are to be required, the Warrant ought to contain the Special Cause, whereupon it is granted. *Palm.* 558. A Warrant for Treason, Murder or Felony, or other Capital Offence, need not contain the Special Cause. *1 Cro.* 148.

How a Justice ought to direct his Warrants.

52. All Warrants made in the King's Name ought to be directed to all Ministers as well within Liberties as without. *Dalt.* 355. A Justice is at Liberty to direct his Warrant to the Sheriff, all High Constables, Petty Constables, &c. in the County in general, or to any one in particular, unless the Statute doth appoint him to whom to direct his Warrant, as several Acts of Parliament do: Some of them appointing him to direct his Warrant to the Constables, some to the Constables and Churchwardens, some to the Churchwardens and Overseers of the Poor; and it is not safe for the Justice of Peace to vary from it.

53. Though for Treason, Felony, &c. it is not necessary to mention the Crime, yet it is best to express the Cause; otherwise, if the Prisoner escape, it is no Offence; but if the Cause be set forth to be for Felony, &c. then a voluntary Escape will be Felony in the Officer, though the Prisoner be not guilty of the Felony, &c.

Constable's Duty about the Watch.

54. Every Justice of Peace may cause the Watch to be set and duly kept, and may direct the Manner of it; but no Man is compellable to watch, unless he is an Inhabitant of the Town. Any suspected Person passing by the Watch at unreasonable Hours may be examined by the Watchmen; and if they find Cause of Suspicion, or if he refuse to answer, they may justify the apprehending him and securing him till the Morning; and if he will not obey the Arrest of the Watchmen, they may levy Hue and Cry, or else they may justify the beating him, or they may carry him to the Constable, who may carry him before a Justice of Peace as they see Cause, by him to be examined, and be bound over, or committed until the Offender be acquitted in due Manner.

55. In an Action of false Imprisonment, the Defendant justified, because at that Time he was Constable of D. and appointed the Plaintiff to watch, and he refused; for which he set him in the Stocks. Upon a Demurrer, it was said by *Wray*, Chief Justice, that the Defendant ought to shew that the Plaintiff was an Inhabitant in the Town, and that it was his Turn to watch; and if such Inhabitant refuse to watch in his Turn, the Constable may set him in the Stocks, *Tin.* 30 *El. B. R.*

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Leon. Rep. Pt. 3. p. 208. pl. 271. Stretton and Brown's Case, Cro. El. p. 204. S. C. and saith it was adjudged for the Plaintiff, because the Defendant did not shew that the Plaintiff was an Inhabitant there, and the Constable cannot appoint a Stranger to watch, neither by the Statute of *Winchester, 13 E. 1. c. 4.* nor by *Stat. 5 H. 4. c. 3.* In the same Case these Points were resolved, 1. That no Man is compellable to watch, unless he be an Inhabitant within the same Town. 2. That such as are Inhabitants within the Town, are not compellable to watch at the Will of the Constable, but only when their Turn comes; for the Statute of *Winchester* says, that Watches shall be kept as hath been used in Times past, which is commonly by Turn, or by the House.

Points resolved in *Stretton and Brown's Case.*

56. If a Person who ought to watch, and is commanded by the Constable so to do, refuses, it is doubted, whether he may put him in the Stocks; it is safer for him to complain to a Justice of Peace, who may bind the Offender over to his good Behaviour, and so over to the Sessions, or the Constable may present him there, or at the Assizes. Watching is properly intended of the Night, and Warding for the Day-time.

57. By *Stat. 5 Ann. c. 31.* A Certificate under the Hand and Seal of two Justices of Peace, that a Watchman or other Person was killed in endeavouring to take a Burglar or House-breaker, intitles his Executor or Administrator to 40 l.

Certificate of Watchman killed, intitles his Executor to 40 l.

58. *Term. Mich. 16 Car. 2. B. R.* It was ordered by the Court, that as well in the Summer as in the Winter, Watch and Ward should be kept in the Night in every Street throughout *Westminster*, and the Suburbs of *London*, and they directed their Order to the Justices of Peace and the Sheriff, and charged the Sheriff with it in Court. And the Chief Justice said that a Rate should be made that every one who inhabits there should contribute so much to such Charge. 1 *Sid. Rep. p. 218.* By *Stat. 5 H. 4. cap. 3.* Watches shall be kept upon the Sea-Coasts as they were wont to be. By the several Statutes following, Watches are regulated in the Places after-mentioned, viz. By 8 G. 2. c. 15. in the Parishes of *St. James Westminster* and *St. George Hanover-Square.* By 9 G. 2. c. 8. in the Parish of *St. Martin in the Fields.* By 9 G. 2. c. 13. in the Parish of *St. Paul, Covent-Garden.* 9 G. 2. c. 17. in the Parishes of *St. Margaret* and *St. John Westminster.* And by 9 G. 2. c. 19. in the Parish of *St. Anne, Westminster.* See below, §. 65. and by 10 G. 2. c. 25. in *Hatton-Garden.* And by 11 G. 2. c. 35. in the Parish of *Christ-Church, Middlesex.*

Order of B. R.

59. And in every Commission of the Peace this Article should be inserted, viz. that the Justices of Peace shall have Power in their Sessions to inquire of Watches, and to punish them who shall be found in Default, according to the Tenor of the said Statute. The Watch ought to be from *Ascension* to

Michaelmas from Sun to Sun, and the Warding then of Course must be the rest of the twenty-four Hours; and for Default of this Watch and Ward the Township may be punished.

Indictment against a Woman.

60. An Indictment against a Woman, for that being *debito modo requisita ad vigilandum non vigilavit*, was quash'd, because it is not said, nor procured one to watch for her, which she might have done. *Cumb.* 243. Indictment of one Good for not assisting to watch. *Black.* 305.

Constable, &c. may require others to aid and assist him, &c.

61. A Constable, Tithingman, &c. generally in the Execution of their Offices (when Need shall be) may require the Aid and Assistance of so many of their Neighbours, or others of all Sorts of able Men above fifteen Years of Age, as they shall think meet; and if any such Person being required by any of these Officers in any such Case shall refuse or neglect to aid them, he may be fined and imprisoned for it at the Quarter-Sessions.

Constable, &c. sued, may plead Not guilty, &c.

62. By *Stat.* 7 *Jac.* 1. c. 5. & 21 *Jac.* 1. c. 12. it is enacted, that if any Action, Bill or Suit, &c. shall be brought against any Justice of Peace, Constable, Tithingman, Churchwarden, Overseer for the Poor, and other Officers there particularly named, or any of their Assistants, for any Thing done by them, or any of them, by Virtue of their or any of their Offices, or by any Persons in their Aid and Assistance, or by their Command; 1. Every such Action or Suit shall be laid within the County where the Fact shall be done and committed, and not elsewhere. 2. That all such Officers and their Assistants may plead the General Issue, Not Guilty, to all such Actions, and give the special Matter in Evidence. 3. That in all such Cases where the Verdict passes for the Defendant, or the Plaintiff is Nonsuit, or discontinues his Suit, these Officers shall have double Costs, to be recovered as other Defendants have their usual Costs.

What Money Constables are to levy, &c.

63. Constables and Churchwardens are to levy, by Distress and Sale, all Monies rated on any Person within their Liberty, for Relief of poor maimed Soldiers and Mariners, and pay it to the High Constable, or they forfeit twenty Shillings. In the same Manner they are to levy what is rated on any for the Relief of the Prisoners in the *King's Bench* and *Marshalsea*, or for the Succour of Hospitals and Alms-houses, and pay it to the High Constable, on Pain of ten Shillings.

64. Four Justices are authorized to allow a Tax for Repair of any decayed Bridges in the Highway, which must be assessed by the Constable, and two of the more sufficient Inhabitants in the Parish.

65. By *Stat.* 10 G. 2. c. 22. The Mayor, Aldermen, and Common Council of *London* are, yearly between the first of *October* and twentieth of *November*, to appoint what Number of Watchmen and Bedels they judge proper within each Ward

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for one Year, beginning the first of *September* the watch, and every Night shall direct the Aldermen, Ward, or on every Rent paid the Constable, the Aldermen, levied by (on Oath) distress and Party to lies with Mayor and

66. The Mayor or Deputy of Number of able-bodied to be placed in Rounds, or Negligence, removal, to those

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for one Year, commencing from the twenty-fifth Day of *December* then ensuing, and how to be armed, and how long to watch, and what Wages, and how many Constables to attend every Night; and shall make orders and Regulations; and shall direct what Sums shall be raised on each Ward, and direct the Aldermen, Deputy, and Common Council Men of each Ward, or the major Part of them, to make an equal Rate upon every Occupier, (Regard being had to the Abilities and Rent paid;) and such Rates are to be collected Quarterly, by the Constables of the Precincts, or Bedels of each Ward, as the Aldermen, &c. shall direct: On Neglect or Refusal, to be levied by Warrant of Lord Mayor or Alderman of the Ward, (on Oath by such Collector of such Refusal or Neglect) by Distress and Sale, &c. and for Want of Distress, to commit the Party to the Compter for a Month, or until Payment. Appeal lies within twenty Days after Demand, to Court of Lord Mayor and Aldermen.

66. The Alderman, &c. or major Part, whereof Alderman or Deputy to be one, within fourteen Days after Appointment of Number of Watchmen shall meet and nominate honest and able-bodied Watchmen; and order in Writing at what Stands to be placed, and in what Manner, and how often to go their Rounds, and then make Orders. And on Death of Watchman, or Neglect, or Misbehaviour, or if necessary to alter any Nomination, Order, &c. may at intermediate Times of the Year remove, nominate, &c. so as their Orders be not repugnant to those of Mayor, Aldermen and Common Council.

67. A true Copy of all such Orders and Regulations, fairly written and signed by the Alderman, or his Deputy, and the Majority of Common Council Men of the Ward shall be given to every Constable. One or more of whom is to attend by Turns every Night, and keep Watch and Ward, from tenth of *September* to tenth of *March* from nine in the Evening till seven next Morning, and from tenth of *March* till tenth of *September* from ten in the Evening till five the next Morning; and shall use their best Endeavours to prevent Fines, Murders, Burglaries, Robberies, and other Outrages and Disorders; and to that End shall arrest all Night-walkers, Malefactors and suspected Persons, who shall be found wandering or misbehaving themselves; and shall carry them, as soon as conveniently may be, before a Justice of Peace; and shall twice or oftner, at convenient Times every Night, go about their Wards, and take Notice whether the Watchmen perform their Duties, and give Notice of Neglect or Misbehaviour to the Alderman or his Deputy.

68. Constables wilfully neglecting to attend any Night in their Turn, to keep Watch and Ward, &c. or not coming at the Hours appointed by the Act, or departing during the

Hours, or neglecting to go about the Ward twice in a Night, or otherwise misbehaving themselves, forfeit twenty Shillings for each Offence.

69. Watchmen, in the Constables Absence, are also to apprehend Malefactors, &c. and Persons whom they shall have just Cause to suspect of any evil Design, and deliver them to the Constable of the Night, as soon as conveniently may be, who is to carry them before a Justice or Justices. *Ibid.*

70. Persons appointed Collectors, refusing to execute the Office, forfeit ten Pounds, and continue liable to be appointed the Year following, and to the Penalties for Refusal. Upon such Refusal or Death, the Alderman, &c. or the major Part of them, may appoint others; who upon Refusal shall be liable to the Penalties of Constables and Bedels refusing. *Ibid.*

71. The Collectors are to collect the Rates quarterly, and keep Books &c. and pay the Money to the Deputy; so as never to have above five Pounds in their Hands at once, during five Days, on Penalty of forty Shillings. The Deputies are to give Receipts, &c. to the Collectors, to be allowed in their Discharge by the Alderman yearly. The Collectors are also, within twenty Days after the End of every three Months, to deliver to the Alderman, or Person appointed by him, their Book, &c. and an Account of Persons neglecting or refusing to pay. And Freemen neglecting or refusing, or desiring to be excused, are incapable of Voting, &c.

72. The Lord Mayor, or any two Justices may hear and determine the Offences subject to pecuniary Penalties, and levy them by Distress and Sale, if not redeemed in five Days: And for want of Distress, to commit to hard Labour not exceeding three Months, or till the Penalty is paid; but they may compound or mitigate, not lower than to a Moiety. But an Appeal lies from their Judgment to the next Quarter-Sessions. The Penalties to go, a Moiety to the Informer, the other Moiety to the Alderman, to be applied to the Expences of the nightly Watch. *Ibid.*

73. Deficiency in Rates shall be paid out of the next Year's Rate: And Surplus-Money shall be carried on to the Credit of the next Year's Account. *Ibid.*

74. Where Houses are let into Tenements to three or more Tenants, the Landlord may be rated, and it may be levied on any Occupier; and Occupier paying shall be allowed it in his Rent by the Landlord. *Ibid.*

75. Persons paying their Rates are not liable to Watch or Ward by Virtue of any other Statute. *Ibid.*

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C H A P. LXII.

Of the Duty of High Constables alone.

1. **THEY** may determine Complaints of Clothiers, and their Spinners, and other Labourers, by Virtue of an old Statute relating to not paying Wages in ready Money, &c. which incurs a Forfeiture of three Times the Value of the Wages, and on Non-payment of the Forfeiture, &c. they may commit the Party till paid. *Statute 4 Ed. 4. c. 1.*

2. An High Constable may enter into any Place to search for Tenters, Ropes, &c. for stretching of Cloth; and if he finds any, he is to deface them; and if the Owners shall afterwards make Use of them, such High Constable has Power to seize and sell them, and distribute the Money to the Poor. *Stat. 39 El. c. 20.* Persons resisting the Constable forfeit 10*l.*

3. High Constables on their receiving Monies from Churchwardens, assessed on any Parish for Relief of poor Prisoners, are to pay over the same to the Collectors appointed by the Justices at their Quarter-Sessions, on the Penalty of 5*l.* *Stat. 14 El. c. 5.*

4. They are also to pay over Monies received for the Relief of Prisoners in the *King's Bench* and *Marshalsea*, under the Penalty of 20*s.* and so of Money received for the Relief of maimed Soldiers and Mariners, on Pain 40*s.* *Statute 43 El. c. 2.*

5. Chief Constables are to pay Petty Constables the Allowances ascertained in Certificates made by Justices for passing of Vagrants, and no more, taking the Certificates, and their Receipts; which Certificates and Receipts are to be allowed the Chief Constable in his Account by the Treasurer of the County. *Stat. 12 Ann. c. 23.* But see *Ch. XXXIII.*

6. High Constables are likewise to pay Monies rated at *Easter Sessions* for the Use of the Poor, to the Treasurers, under the Penalty of 20*s.* by *Stat. 43 El. c. 2.*

7. High Constables paying Money for passing of Vagrants without the Petty Constables producing a Receipt for such Vagrants, to forfeit 20*s.* *Stat. 1 Ann. Sess. 2. c. 13.*

8. High Constables are to issue Precepts to Petty Constables, to prepare Lists of Jurors, to make Presentments of Offences, and levy Gaol-Money, &c.

9. The High Constable, when established in his Office, has the Direction of the Petty Constables, Headboroughs and Tithing-Men within his Hundred, and his Duty in general in few Words is to keep the Peace, and to apprehend Felons, Rioters, &c. to make Hue and Cry after Felons, and take Care

Duty and Power, &c. of High Constables.

Care that the Watch be duly kept in his Hundred, and that the Statutes for punishing Rogues and Vagrants be put in Execution. He ought to prevent unlawful Gaming, Tippling and Drunkenness, Bloodshed, Affrays, Recusants, Profane Swearers, &c. He is to execute Precepts and Warrants directed to him by Justices of Peace, and make Returns to the Sessions of the Justices to all the Articles concerning his Office; and he is to issue his Precepts to the Petty Constables, to make Presentments of Offences, and cause them to make their Returns; also to prepare Lists of Jurors, levy Gaol-Money, &c. He is to return all Victuallers, and Alehouse-Keepers that are unlicensed, and such as keep unlawful Gaming-Houses, and Gamesters, and such Persons as entertain Inmates likely to become chargeable to Parishes. He must likewise present such as refuse to watch, and the Faults of Petty Constables, Headboroughs, &c. who neglect to apprehend Rogues, Vagrants, and idle Persons, Whores, Night-Walkers, Mothers of Bastard Children, who are like to be a Charge to their Parishes, &c. and also all Defects of Highways and Bridges, and the Names of those who ought to repair them; Scavengers who neglect their Duty, and those who neglect to pave their Doors, &c. and all common Nuisances in Streets and Ways; Bakers who sell Bread under Weight, Brewers selling Beer to unlicensed Alehouses, Forestallers, Ingrossers, Regrators, &c. And at every Quarter-Sessions, High Constables are to pay the Treasurer of the County all such Money as hath been levied and received by them of the Churchwardens of Parishes, for the Relief of Poor in Prisons and Hospitals, &c. Also they are to pay Petty Constables Allowances for passing Vagrants, taking the Certificates and their Receipts, which shall be allowed by the Treasurer of the County. *Dalt. c. 28. Lamb. 125. Stat. 13 G. 2. ch. 24.*

The Duty and Authority of Petty Constables, &c.

10. The Duty and Authority in general of Petty Constables in their several Towns, Tithings, &c. is much the same as the High Constable hath in his Hundred; they are to keep the Peace, and as Conservators thereof, they may command Affrayers to depart, &c. and may break into a House to see Peace kept, make fresh Pursuit into another County, &c. They may also command all Persons to assist them to prevent a Breach of the Peace, justify Beating another if assaulted; and if they happen to be killed doing their Duty, it will be Murder. They may without Warrant from a Justice take into Custody any Persons whom they see committing a Felony or Breach of the Peace. But they are to have a Justice's Warrant, if it be not in View; and a Constable cannot detain a Man at his Pleasure, but only stay him to bring him before a Justice to be examined and committed, &c.

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11. They must assist the High Constable in making Presentments at the Assizes and Quarter-Sessions of every Thing that is amiss. And Part of their Office consists in Attendance upon Judges of Assize, Justices of Peace, at their General and Special Sessions, and other Meetings, to execute Warrants and present Offences, and they are to attend at Courts-Leet, and on Coroners for executing Warrants, &c. *Dalt. c. 1. § 8. Lamb. 126. H. P. C. 93, 135.*

12. And Constables of *London* in every Ward are obliged to attend the Watch by Turns to go the Rounds, and with the Bedels warn such as are fit to serve on the Watch in their several Precincts, and they shall be aiding and assisting to the Watchmen who must obey their Orders, &c.

Of Petty Constables in London, &c.

C H A P. LXIII.

Of those Parts of a Constable's Duty which relate to Parish Business.

1. **T**HUS having treated of the Power and Duty of Constables in general, I shall proceed to treat of the Duty of Constables in particular; but first I shall give you his Oath, till which is administered he is not properly in his Office.

The Oath of a Constable.

2. **Y**OU shall well and truly serve our Sovereign Lord Constable's King George, and the Lord of this Leet (if sworn in a Court-Leet) in the Office of a Constable in and for the Hundred of A. or Parish of, &c. for the Year ensuing, or until you shall be thereof discharged according to due Course of Law; you shall well and truly do and execute all Things belonging to the said Office, according to the best of your Knowledge.

So help you God.

3. This Oath is now administered for the Shortness of it; but the Oath which was formerly given him was very long, and related to several Articles, many of which are foreign to our present Purpose; I shall therefore mention only those which relate chiefly to Parish Business, which are as follow;
and

and of which, I shall treat in few Words, and in Alphabetical Order.

<i>Alehouses,</i>	<i>Ministers disturbed,</i>
<i>Basardy,</i>	<i>Presentments,</i>
<i>Barwy houses,</i>	<i>Prisoners and Prisons,</i>
<i>Bridges,</i>	<i>Recusants,</i>
<i>Carriages,</i>	<i>Robbery,</i>
<i>Cattle,</i>	<i>Servants,</i>
<i>Conventicles,</i>	<i>Soldiers,</i>
<i>Distresses,</i>	<i>Sundays,</i>
<i>Drunkenness,</i>	<i>Superstitions,</i>
<i>Escapes,</i>	<i>Swearing,</i>
<i>Highways,</i>	<i>Tithes,</i>
<i>Hue and Cry,</i>	<i>Vagrants,</i>
<i>Inns,</i>	<i>Warrants,</i>
<i>Juries,</i>	<i>Watches,</i>
<i>Lamps,</i>	<i>Weights and Measures.</i>
<i>Land-Tax,</i>	

C H A P. LXIV.

Alehouses.

Petty Constables Duty about Alehouses.

1. **I**F the Constable doth not levy 20 s. to the Use of the Poor, upon such who keep unlicensed Alehouses, which Distress he may sell after three Days; and if no Distress, then if he do not whip the Offender, one Justice may commit the Constable without Bail, until the Alehouse-keeper is punished, or until the Constable pay 40 s. to the Use of the Poor.

A Warrant to levy 20 s. on the first Conviction, for selling Ale without a Licence.

To the Constables and Churchwardens of the Parish of
within the Liberty of *Westminster*,
and to each and every of them.

2. Westm. ss. **W** Hereas of the Parish of
Viſtaller, was this Day
lawfully convicted before me, one of his Majesty's Justices of the
Peace for the City and Liberty of Westminster, for keeping a
common Alehouse in the said Street and Parish, and selling of
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Beer, Ale, and other Liquors therein, not being thereunto lawfully licensed according to the Form of the Statute in that Case made and provided, by Reason whereof, and for which Offence, he the said

has forfeited to the Poor of the said Parish the Sum of twenty Shillings of lawful Money; and whereas he the said

has been duly summoned before me, to shew Cause why he should not be convicted for his said Offence, and hath not appeared or shewn sufficient Cause: These are therefore in his Majesty's Name to require you, or one of you, forthwith to levy the said Sum of twenty Shillings by Distress and Sale of the Goods and Chattels of the said

and in Default of Payment of the said Sum of twenty Shillings within three Days after such Distress taken, that then you appraise and sell the same, to satisfy the said Forfeiture, rendering to the said the Overplus (if any there be)

and if no such Distress can be had or taken, that then you certify the same to me, to the End I may further proceed as to Law doth appertain; and hereof fail not. Given under my Hand and Seal the

Day of

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3. He is to levy the Penalty on Alehouse-keepers selling less than Measure, &c. or forfeit 40 s. to be levied by Warrant from one Justice; and if no Distress, to be committed; and not levying Penalty for Tippling, forfeits 10 s. 1 Jac. 1. c. 9. 21 Jac. 1. c. 7. 1 Car. 1. c. 14. 11 & 12 W. 3. c. 15.

4. Upon those convicted of Drunkenness he must levy 5 s. for the Poor; if the Party is not able to pay it, he must sit in the Stocks six Hours, &c.

5. Not delivering the Poor's Moiety of the Penalty of 6 s. 8 d. per Barrel for selling Ale to an unlicensed Alehouse-keeper over to the Churchwardens, &c. and they not distributing it among the Poor, forfeit double the Value. 4 Ja. 1. c. 4. but in all these Cases there must be a Justice's Warrant.

6. If a common Inn-keeper or Alehouse-keeper refuseth to lodge a Traveller, he offering to pay ready Money for his Victuals, &c. the Constable may cause such an Inn-keeper or Alehouse-keeper to be indicted at the Sessions or Assizes, where he may be fined and imprisoned, or the Party grieved may have his Action on the Case against the Inn-keeper or Alehouse-keeper; but they are not bound to lodge or find Victuals without ready Money tendered, or paid, if required. And in the Condition of the Recognizance, which every Alehouse-keeper enters into, that is licensed to sell Drink, it is one Clause, that he shall keep one or more spare Beds for lodging of Strangers.

C H A P.

C H A P. LXV.

Bastardy.

About Bastardy.

1. **A** Constable may put a Person in the Stocks leaving a Child in a Parish, and not carrying it away being required, until such Time as he shall take up the Infant. *Poph. Rep. 12.*

C H A P. LXVI.

Bawdy-Houses.

About Bawdy-Houses.

1. **A** Constable having Information that Persons resort to a common Bawdy-House, and there keep Company with lewd Women, may, with others called to his Assistance, enter such House, and arrest the Offenders for a Breach of the Peace. *Mich. 13 Hen. 7.* But he must find them in Company with lewd Women, and he is to carry them before a Justice of the Peace, which he may do without a Warrant. *Dalt. 214, 469.*

C H A P. LXVII.

Bridges.

About Bridges.

1. **C**onstables and two of the most able Inhabitants in every Parish, are to make an Assessment for the Repairs of Bridges, where a common Bridge is in Decay, and it cannot be known who or what Lands ought to repair it; and four Justices are to allow the Assessment; and Money assessed is to be levied by Distress by Constables, &c. *Stat. 22 Hen. 8. c. 5. 1 Ann. c. 18.*

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C H A P. LXVIII.

Carriages.

1. **T**HE Constables shall provide Carriages on the March-About Carriages.
ing of Soldiers, by Virtue of a Justice of Peace his Warrant, being allowed by the Officers for a Waggon and five

Horses 1 s. a Mile; and for a Cart and four Horses 9 d. per Mile; and no Waggon shall be obliged to carry above twenty hundred Weight; Officers forcing a Carriage to travel more than one Day shall forfeit 5 l. And Constables neglecting their Duty, or any Persons hindering them, are liable to a Forfeiture not exceeding 40 s. nor less than 20 s. Statute 6 Geo. 2: cap. 3.

2. Horses of Carriers and Waggoners having above their number allowed by Law, which may be seized as forfeited, are to be delivered to Constables, &c. and by them re-delivered, on Conviction of the Offence before a Justice. 1 G. 1. cap. 10.

C H A P. LXIX.

Cattle.

1. **C**onstables and Tithingmen, &c. or any other Persons, About Cattle.

may seize Cattle brought from *Ireland*, or other Parts beyond the Seas, and cause them to be killed in six Days after Conviction, and the Hides and Tallow shall be to the Seizor; and the Remainder to be distributed among the Poor of the Parish where imported or found. And Constables, or others seizing, not giving Notice to Churchwardens and Overseers of the Poor of the Seizure, and they not distributing the Poors Part, shall forfeit 40 s. for every one of the great Cattle, and 13 s. for every Sheep or Swine; one Moiety to the Poor, the other to the Informer, or be committed to Gaol for three Months. Stat. 18 Car. 2. c. 2. 32 Car. 2. c. 2.

CHAP.

C H A P. LXX.

Conventicles.

About Con-
venticles.

1. **C**onstables, Headboroughs, Tithingmen, Churchwardens, &c. are required to levy the Fines imposed on those who shall be present at unlawful Conventicles, by Virtue of a Warrant under the Hand of one or more Justices. 22 Car. 2. cap. 1.

2. Constables, &c. knowing or being credibly informed of any Conventicle within their Precincts, and not giving Information thereof to some Justice of Peace or Chief Magistrate, and endeavouring to convict the Persons, forfeit 5 l. 22 Car. 2. cap. 1.

3. On Information given of Conventicles, Constables, &c. with Aid and Assistance may, by Virtue of a Warrant, from one or more Justice or Justices, or Chief Magistrate (upon Refusal of Admission) break open Doors, and enter into any House or Place, where they are informed such Conventicles are held, and take into Custody Persons unlawfully assembled. *Ibid.*

4. The Houses of Peers not to be searched, unless in the Presence of the Lord Lieutenant, or two Justices of the Peace; and Protestant Dissenters are excepted out of this Act. Stat. 1 W. & M. c. 18. But if an Assembly of Dissenters should be held in any Place with the Doors locked or bolted during the Time of Service, they are liable to Prosecution as others, notwithstanding taking the Oaths, &c. directed by the Act 1 W. & M. cap. 18.

5. Any Person sued for acting according to the Statute 22 Car. 2. cap. 1. may plead the General Issue, and give the Special Matter in Evidence, and recover treble Costs. Stat. 22 Car. 2. c. 1.

C H A P. LXXI.

Distresses.

About Di-
stresses.

1. **T**HE Constable in taking Distresses is to assist the Landlord or Person distraining, and where any Goods or Chattels shall be taken in Distress for any Rent reserved, and due upon any Demise, Lease or Contract, and the Tenant

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and Owner of the Goods shall not within five Days after such Distress taken, and Notice thereof given, and of the Cause left at the Dwelling-House, or most notorious Place on the Premises charged with the Rent distrained for, replevy the same according to Law; then the Landlord, or Person distraining, may, with the Sheriff or Under-Sheriff of the County, or with the Constable of the Hundred, Parish or Place where the Distress shall be taken (who are required to be aiding and assisting therein) cause the Goods and Chattels to be appraised by two sworn Appraisers, and afterwards sell the same for the best Price towards the Satisfaction of the Rent, and Charges of Distress, Appraisement and Sale, leaving the Overplus in the Sheriff's or Constable's Hands for the Use of the Owner. *Stat. 2 W. & M. c. 5.*

2. N. B. The Under-Sheriff, Constable, &c. have Power to administer an Oath to the Appraisers.

Appraisers OATH.

3. **Y**OU shall swear that you will faithfully appraise and value the Goods now taken in Distress, and mention'd in the Inventory to you shewn, as between Buyer and Seller, according to the best of your Skill and Understanding; you shall not through Partiality, Interest, or otherwise, over or under estimate the said Goods, but impartially do your Duties herein.

So help you G O D.

4. And where Tenants fraudulently convey away Goods, the Landlord, &c. may in five Days seize such Goods wheresoever found, as a Distress for Rent in Arrear, except *bona fide* sold for a valuable Consideration, by *Stat. 8 Ann. cap. 17.*

5. Now by *Stat. 11 Geo. 2. cap.* where Goods are fraudulently remov'd, &c. Landlords may seize them within thirty Days after; and if they do not exceed the Value of fifty Pounds, two Justices (upon Complaint in Writing from the Landlord or his Balliff) may hear, &c. in a Summary Way, and adjudge Offenders to pay double Value to Landlords; to be levied by Distress, &c. and for Want of Distress, six Months hard Labour in the House of Correction, if the Money be not sooner paid: There lies an Appeal to the General or Quarter Sessions.

6. Landlords, or their Stewards, &c. may break open Houses, &c. where such Goods are kept, being assisted by a Constable, &c. who must assist therein: In Case of a Dwelling-House, Oath being first made before a Justice of a reasonable Ground of Suspicion. *Ibid.*

C H A P. LXXII.

Drunkenness.

About Drunkenness.

1. **C**onstables are to levy the Sum of 5 s. on Persons convicted of Drunkenness, for the Use of the Poor; and if the Party is not able to pay it, he must be set in the Stocks six Hours, &c. 4 Jac. 1. c. 5. 21 Jac. 1. c. 7.
2. Neglecting to levy the said Penalty upon Warrant from one Justice, to forfeit 10 s. 4 Jac. 1. c. 5.
3. Constables, Tithing-men, Churchwardens, &c. are to suppress Drunkenness. 21 Jac. 1. c. 7.

C H A P. LXXIII.

Escapes.

About Escapes.

1. **I**F a Constable permits a Felon to escape before he is arrested, it is a Misdemeanor, for which he may be indicted and fined; and if the Felon be actually taken and in Custody, and then he voluntarily suffers him to escape, or to kill or destroy himself, it is Felony in the Constable; but if the Escape is by Negligence, or involuntary, or the Felon destroys himself unawares to the Constable, it is only fineable. *Dalt.* 379. *Cro. Eliz.* 752.

2. Constable may pursue an Offender making an Escape into another Country, and bring him back to the Justice of Peace. *Crompt.* 148, 173, &c. He may put a Felon in the Stocks and lock him in, or put Irons upon him, or pinion him to prevent an Escape, when he is about to carry him to a Justice of Peace, or to Gaol. *Dalt.* 342.

3. He may discharge any Person arrested on Suspicion of Felony only, where no Felony is committed; but if a Felony be actually committed, he cannot justify the Discharging him, tho' he know that the Party is innocent; but it must be done by due Course of Law; otherwise it will be an Escape. *Crompt.* 40. *Cro. Eliz.* 202.

4. Constables *ex Officio* are to apprehend Felons, call others to their Assistance, apprehend Persons upon Suspicion, and carry them before a Justice, &c. and any Person may arrest one who has committed Felony. The Constable may justify the Breaking open a House to take a Felon; and if the Felon fly,

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he is to make an Inventory of his Goods in the Presence of Neighbours, and send Hue and Cry after him, and the Neglect thereof is fineable by the Justices.

5. If upon such Flight he is apprehended in another County, the Felon must be committed where taken, and not where the Fact was done, but must be remov'd thither by *Habeas Corpus*, in order to be tried.

6. Two Justices (*Quorum unus*) are to set a Tax upon every Parish in a Hundred, where Damages are recovered against any one or more Inhabitants of that Hundred, upon the Statute of *Winton*; and the Constables of every Parish are to set a Tax upon every Inhabitant of those Parishes where they refuse to contribute, and may levy the same by Distress, &c.

C H A P. LXXIV.

Highways.

BY Stat. 2 & 3 P. & M. c. 8. Constables were yearly on *Tuesday* or *Wednesday* in *Easter Week* to call together the Inhabitants, and choose two Surveyors of the Highways for the next Year, or they were liable to be fin'd in Quarter-Sessions. 2 & 3 P. & M. cap. 8. About Highways.

2. But now by Statute 3 & 4 W. & M. cap. 12. Constables, Churchwardens, &c. and Inhabitants are enjoined to meet the Day after *Christmas Day*, and the greater Part of them so met to agree on Persons qualify'd to serve the Office of Surveyor; a List of which the Constable must return to the Justices of Peace at a Special Sessions on the Third of *January* following, in order to their Appointment of Surveyors, under the Penalty of 20 s. The like Penalty for the Constables not serving such Surveyors with the Justice's Warrant within six Days after Appointment.

3. Constables and Churchwardens have Power to call a Bailiff or a High Constable to account for Fines received for Defaults in Reparation of Ways on Presentments, &c. and if he should refuse to pass his Accounts, they may summon him before two Justices, who may commit him 'till he has satisfy'd all the Arrears, except 8 d. in the Pound for his own Fee for collecting, and 1 s. in the Pound for the Clerk of the Peace. 2 & 3 P. & M. c. 8.

4. By Stat. 22 Car. 2. c. 12. All Constables as well as Surveyors, are to put the Act in Execution, relating to the Repairing and Enlarging of Highways, on Pain of forfeiting a Sum not exceeding 40 s. at the Discretion of a Justice of Peace,

and are to levy the Penalties relating to Scavengers, and Defaults in cleaning the Streets of London, &c.

C H A P. LXXV.

Hue and Cry.

About Hue
and Cry.

See below
Sect. 7.

1. **A** Constable is to raise Hue and Cry upon Notice, and describing the Felon, and telling him which Way he is gone; and for this Purpose he is to call upon the Parishioners to assist him in the Pursuit of the Felon to the next Constable, and he to the next, who is to do as the first, and so from Town to Town and County to County, &c. And in the mean Time the first Constable is to make an Inventory of the Felon's Goods, in the Presence of his Neighbours; if he refuse to pursue the Felon, he may be indicted, &c. But the Place where he gave Notice must be set forth in the Indictment. *Cro. El. 654, 655.*

2. Pursuers of the Hue and Cry may search suspected Houses, and arrest suspicious Persons; and not only Officers, but all others who shall pursue the Hue and Cry, may arrest all such Persons as in their Search and Pursuit they shall find suspicious, and carry them before some Justice of the Peace of the County where taken, to be examined where they were at the Time of the Felony committed. *13 Ed. 1. c. 1.*

3. Inhabitants of any Hundred, where Hue and Cry is made, neglecting to pursue, shall answer one Moiety of the Damages recoverable against the Hundred, where the Robbery is committed, by *Stat. 27 El. c. 13.*

4. Where any of the Robbers is apprehended, or where the Action is not prosecuted within one Year after the Robbery committed, the Hundred is not chargeable for the Robbery; and the Hue and Cry shall not be adjudged legal, unless the Pursuit be both by Horse and Foot. *Dyer 370.*

5. He who goeth not at the Command of the Constable, upon Hue and Cry, shall be grievously fin'd and imprison'd. *Co. 2 Inst. 172.*

6. Where Damages are recovered against one, or some few Inhabitants of the Hundred for a Robbery, and the rest refuse to contribute thereunto, two Justices of the Peace (*Quorum unus*) dwelling within or near the Hundred, may, for the levying thereof, set a Tax upon every Parish within that Hundred, according to which, the Constables and Headboroughs of every Town must tax the particular Inhabitants within their Limits, and then levy the Money upon such as refuse, by Distress and

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Sale of their Goods, restoring them the Overplus; and after the Money is gathered, they are to deliver the same to the Justices, or some of them who made the Rate, within ten Days.

Stat. 27 El. c. 13.

7. Every Constable, Borsholder, Headborough or Tithing-man, to whom Notice is given, or at whose Dwelling-House Notice of any Robbery is left, and every Constable of the Hundred, and every Constable, &c. of any Town, Parish, Village, Hamlet, or Tithing within the Hundred, or Franchises within the Precinct thereof wherein a Robbery happens, as soon as the same comes to his Knowledge either by Notice from the Party robbed, or from any other Person to whom Notice was given thereof, pursuant to this or any other Statute, are, with the utmost Expedition, to make, and cause to be made fresh Suit, and Hue and Cry, after the Felon or Felons by whom the Robbery was committed. And if any Constable, &c. offend in the Premises, by refusing or neglecting, &c. he forfeits for every Refusal or Neglect 5*l.* by Action, half to the King, half to him that will sue. *Stat. 8 Geo. 2. c. 16.*

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Cry, by Stat.
8 G. 2. c. 16.

C H A P. LXXVI.

Inns.

1. **I**nn-keepers are to sell all Kinds of Victuals for Man and Beast at reasonable Prices, having Respect to the Price sold in the Markets adjoining, without taking any Thing for Horse-Litter, or they shall be fined and imprisoned, and for a third Offence, may be put in the Pillory, by 21 *Jac. 1. cap. 21.*

2. And if a common Inn-keeper or Alehouse-keeper shall refuse to lodge a Traveller, or to provide him Victuals, &c. who offers to pay ready Money for the same, the Constable, on Complaint, is to cause such Inn keeper, &c. to be indicted at the next Sessions, where the Justices may punish him by Fine and Imprisonment. 10 *Hen. 7. c. 8.*

3. If the Traveller does not approve this Method of proceeding, he may bring his Action at Law against the Inn-keeper in any of the Courts at *Westminster*, and recover Damages. *Dalt. f. 30.*

4. *N. B.* Upon any Disputes in an Alehouse or Tavern, &c. about paying the Reckoning, and the Parties offer to make their Escapes, without paying, if there be no Swords drawn, Beating, Wounding, or visible Breach of the Peace, the Con-

stable is not bound to go, though sent for, nor is it warrantable for him to arrest and carry them before a Justice, unless a Warrant be put into his Hand; for this is only a Debt, and the Party aggrieved must bring his Action for the Credit he gave for the Victuals or Drink, &c. being freely deliver'd by his Consent.

C H A P. LXXVII.

Juries.

About Juries.

1. **A**T Michaelmas Sessions yearly, Constables, &c. are to give in to the Justices of Peace, a List of the Names and Places of Habitation (within their respective Limits) of all Persons qualified to serve on Juries between the Age of 21 and 70, and Sheriffs shall impanel no others, &c. under the Penalty of 20*l.* *Stat. 7 & 8 W. 3. c. 32.*

2. The Qualifications are 80*l.* *per Annum* Freehold for a Grand Juryman, and 10*l.* *per Annum* Freehold or Copyhold for a Petty Juryman, except it be in Corporations where a Freeman worth 40*l.* in Goods may serve on the Petty Jury, by *Stat. 7 & 8 W. 3. c. 32.*

3. But Aliens, Attornies, Apothecaries, Butchers, Clergymen, Counsellors, Infants, Persons attainted for any Crime may not serve on Juries.

4. Constables neglecting to return Lists of Names of Persons fit to serve on Juries, shall forfeit 5*l.* And by the *Stat. 3 & 4 Ann. c. 18.* High Constables are to issue their Precepts to Petty Constables, to prepare such Lists by Virtue of a Warrant from Justices in the Sessions, under the Penalty of Ten Pounds.

5. Lists of Jurors qualified are to be made from the Rates of each Parish, and yearly fixed on the Doors of Churches, &c. twenty Days before the Feasts of St. Michael, that publick Notice may be given thereof; and returning Officers, as Constables, &c. wilfully omitting Persons qualify'd, or inserting wrong Persons, shall forfeit 20*s.* by *Stat. 3 G. 2. c. 25.*

6. Duplicates of the Lists when adjusted by the Justices, are to be delivered by the Clerks of the Peace to the Sheriffs of Counties, and Constables must subscribe their Lists, and attest the Truth of them upon Oath before one or more Justices of Peace, and then deliver them to the High Constables of the Hundreds, who are to deliver them attested to the Justices in Sessions. *Ibid.*

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7. By the same Act, Persons having Estates held by Lease for 500 Years or more, or 99 Years, or any other Term determinable on Lives, &c. of the yearly Value of 20*l.* are qualified to serve on Juries; and none shall be returned as Jurymen in *London*, but Householders having Lands or Personal Estate to the Value of 100*l.*

8. The Juries for Trial of Causes are to be chosen by Ballot, by drawing Papers with the Names of the Jurors summoned, rolled up in a Box, &c. *Ibid.*

C H A P. LXXVIII.

Lamps.

1. **T**HE Penalty of 2*s.* for not hanging out Lights, or About Lamps, agreeing for Lamps in the Streets of *London*, is leviable by Constables. This Matter is put upon a new Footing in *London* by 17 Geo. 2. c. 29.

C H A P. LXXIX.

Land-Tax.

1. **I**N collecting the Land-Tax, Constables are to be assisting, and where it is refused Payment, they are to take a Distress, &c. and in the Day-time, with the Collectors, Constables may justify Breaking open Houses, by Virtue of a Warrant from the Commissioners. 5 Geo. 2. About the Land-Tax.

2. Where Lands or Houses are unoccupied, and no Distress to be found, whereby the Parish, &c. is charged, the Collectors, Constables, or Tithing-men of the Parish or Place, may at any Time after take a Distress upon the Lands, or in the Houses to re-imburse the Parish; and if such Distress be not redeemed within four Days, they may sell the same, and distribute the Money among the Parties who contributed to the Tax proportionably, rendering the Overplus to the Owner.

3. Wood may be cut at seasonable Times in the Year, and Tithes, Tolls or annual Profits not distrainable, may be seized and sold for Satisfaction of the Tax where Assessments are made upon such Woodlands, or Tithes, &c.

4. Persons are to be taxed in the Parish where they dwell, for Goods, Wares or Merchandizes in any other Parish.

5. Commissioners appoint two of the most able and sufficient Inhabitants of each Parish, Place or Township, to be Assessors, &c. and these are to return (along with the Certificate of Assessment) the Names of two or more able and sufficient Persons to be Collectors of the Monies which shall be assessed; and the Parish or Place in which they are employed, shall be answerable for these Collectors paying in the Money to the Receiver General.

C H A P. LXXX.

Ministers disturbed.

About Ministers disturbed.

1. **A** Constable, *ex Officio*, may apprehend one disturbing a Minister, and carry him before a Justice of Peace.

C H A P. LXXXI.

Presentments.

About Presentments.

1. **C**onstables are to make Presentment, on Oath, at the Quarter Sessions and the Assizes, of all Things within their Knowledge against the Peace, and relating to their Office, mentioned in the Particulars of their Oath.
2. High Constables, by Virtue of a Warrant from Justices of Peace, issue their Precepts to Petty Constables, to make Inquiry and Presentments, &c. and they usually make their Returns, and bring them to a Justice to sign, and then carry them to the High Constable as their Return to his Precept, who makes Oath at the Sessions or Assizes, that he had them from the Petty Constable. *Dalt. c. 28.*

A Precept from a High Constable to Petty Constables, to make Presentments of Offences committed in their Precincts.

3. Berks, ff. **B**Y Virtue of a Warrant to me directed, from, &c. four of his Majesty's Justices of the Peace for this County of Berks: These are to require you to make your Appearance at the next General Quarter-Sessions of the Peace, to be held at, &c. on, &c. for the County aforesaid, and

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and then and there to carry with you and produce in Writing, a Presentment, containing the Names, Professions, and Places of Abode of all or any Persons who have done or committed Treason, Murder, Felony, Robbery, Theft, Riots, Routs, and unlawful Assemblies, Assaults, Batteries, Bloodshed, Rescues; using deceitful Weights or Measures, Forestalling, Ingrossing, or Regrating, not pursuing Hue and Cry, keeping Alehouses without Licence, keeping Bawdy-Houses, being Drunkards, Swearers, Blasphemers, Profaners of the Sabbath, Harbourners of Inmates, building Cottages contrary to Law, Incroachment upon Commons, Defaults in not repairing Highways and Bridges, and in cleansing of Ditches; and generally all Manner of Trespasses and Offences whatsoever inquirable by you, and committed within your Parishes and Precincts; to the End, that Offenders may be punished according to Law. Dated, &c.

The Form of a Constable's Presentment.

The Presentment of A. B. Constable of, &c. in the County of, &c. made at the Quarter-Sessions of the Peace, held for the said County the Day of, &c. 1739.

4. **T**HE said A. B. says upon his Oath, that C. D. of the Parish of, &c. in the County of, &c. aforesaid, does at this Time, and has, for the Space of one Month past, kept an unlawful Gaming-House in the said Parish of, &c. viz. he has permitted Servants, Apprentices, &c. to play at Cards, Dice, and other Games prohibited by Law, to the great Encouragement of Vice, and Disturbance of the Neighbourhood there.

The said A. B. likewise further presents upon his Oath, That E. F. of the said Parish of, &c. frequently carries out stinking Carcasses, and other Filth into the Highways, which is a common Nuisance to the Parish, and an Annoyance to Travellers.

The said A. B. also presents G. H. to be a common Disturber of the Peace.

C H A P. LXXXII.

Prisoners and Prisons.

About Prison-
ers, &c.

1. **W**HEN a Constable carries a Felon, or one suspected of Felony, to Gaol, the Gaoler is obliged to receive him; but if he refuses to do it, then the Constable may either secure the Prisoner in his own House, or carry him back to the Town where apprehended, and the Town shall be chargeable for the keeping of him 'till the next Gaol-Delivery, where the Gaoler shall be punished. 10 Hen. 4. *Dalt.* 310.

2. If a Felon escape from Gaol by the Negligence of his Keeper, and against his Consent, it is Felony in the Prisoner for the Breach of Prison, and the Gaoler is fineable. *Dalt.* 379. *Staundf.* 32, 34. If voluntary in the Gaoler, it is Felony in him.

3. Constables are to levy Money for Reparation of Gaols by Warrant from Justices. *Stat* 11 & 12 W. 3. c. 19.

4. Justices of Peace in the Sessions may tax every Parish in the County, not exceeding a certain Sum yearly, for the Relief of poor Prisoners, leviabie by Constable, &c. *Stat.* 43 *Eliz.* c. 2.

5. The House of Correction, and the Compters of the Sheriffs of London, are the common Prisons for Offenders for the Breach of the Peace, &c.

6. Constables may convey Persons thither, taken up by the Watch late at Night, and who are unruly or suspicious; but they ought to be careful who they send thither, for fear of Actions for false Imprisonment.

CHAP.

C H A P. LXXXIII.

Recusants.

1. **C**onstables may complain to, and carry before a Justice, About Recu-
Persons suspected to be Papists, &c. and they are to fants.
present once a Year to the Quarter-Sessions those who absent
themselves from Church for the Space of a Month, and the
Names of their Children above nine Years of Age, and of
their Servants, or shall forfeit for every Default 20 s. *Stat.*
3 *Jac. 1. cap. 4.* Also Constables must certify to the Sessions
the Names of Popish Recusants Convict, who within twenty
Days after their Arrival at the Place of their Birth or Settle-
ment, give in their Names in Writing to the Minister, Con-
stables, &c. to be entered in a Book for that Purpose. *Stat.*
35 *Eliz. cap. 2.*
2. Constables may complain to a Justice of Persons suspect-
ed of Recusancy, and such Justice, on their Refusal of taking
the Oaths, may commit them 'till the next Assizes or Sessions,
7 *Jac. 1. cap. 6.*

C H A P. LXXXIV.

Robbery.

1. **W**HERE Damages are recovered against a Hundred, About Rob-
for a Robbery committed on the Highway, and bery.
two Justices have set a Tax upon the several Parishes in the
Hundred; the Constables in every Parish are to tax particular-
ly every Inhabitant of those Parishes, and levy the same by
Distress, &c. 27 *Eliz. cap. 13.*
2. The Hundred is chargeable where a Robbery is commit-
ted by Day-light on any Day except Sunday; but no Hundred
is chargeable, if any one of the Malefactors is apprehended in
40 Days, or when the Action is not commenced within a Year.
Ibid.
3. A Reward of 40 l. is given by Statute for apprehending
a Robber on the Highway, and the Apprehender is likewise
to have the Horses, Arms, &c. of Robbers. 4 & 5 *W. & M.*
cap. 8.

C H A P. LXXXV.

*Servants.*About Ser-
vants.

1. **C**onstables and two Housholders of Towns and Places, by an old Law are to give Testimonials to Servants of their faithful Service, and Servants not procuring such Testimonials shall not be retained, but may be punished as Vagrants. 5 *El. c. 4.*

C H A P. LXXXVI.

*Soldiers.*About Sol-
diers.

1. **C**onstables, Tithing-men, &c. are to quarter Soldiers in Inns, Livery-Stables, Ale-houses, Victualling-houses, Shops selling Brandy, &c. Distillers and private Houses excepted. *Stat. 6 G. 2. c. 3.*
2. Refusing to billet Soldiers, shall be fined not exceeding 40*s.* nor less than 10*s.* and if they receive any Reward to excuse such Quartering, or if Victuallers refuse Soldiers quarter'd, shall forfeit not under 40*s.* nor above 5*l.* *Ibid.*
3. If any Soldiers shall be billeted on private Houses without the Owner's Consent, he may have his Remedy at Law; and any military Officer quartering Soldiers otherwise than as directed by Statute, or abusing the Constable, &c. shall be cashier'd. Any Justice of Peace may command Constables, &c. to give an Account in Writing of the Number of Officers and Soldiers billeted by them, with the Names of the Persons on whom billeted, and their Streets, Signs, &c. to prevent Abuses in the quartering of Soldiers.
4. Officers, Civil or Military, are not to quarter the Wives, Children, or Servants of Officers, or Soldiers in any Houses, without the Consent of the Owner, on Pain of being cashier'd, if an Officer of the Army, and of forfeiting 20*s.* if a Constable, &c. leviable by Warrant of the next Justice of the Peace. 6 *G. 2. c. 3.*
5. By 11 & 12 *W. 3.* lewd and disorderly Servants, Vagabonds and sturdy Beggars, are to be sent to serve his Majesty at Sea, by Warrant from a Justice directed to the Constable, &c.
6. Constables and Churchwardens are to levy by Distress Money rated on Persons for Relief of poor maimed Soldiers and

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cap. 2.

C H A P. LXXXVII.

Sunday.

1. **S**earch is usually made on a *Sunday* by Constables and About Sunday. other Parish Officers after such as prophane the Sabbath, &c.

2. Persons who resort to Wrestling, Bowling, Dancing, or any Sport on a *Sunday*, forfeit 5 s. if above fourteen Years of Age, and 1 s. if under, levied by the Constable by Warrant of one Justice; and Constables, Churchwardens, &c. are to levy the Penalty of 3 s. and 4 d. on such as use Games on a *Sunday*, for the Use of the Poor, by Distress; for want whereof the Offenders shall be set in the Stocks three Hours. 1 Car. 1. cap. 1.

3. If any Person doth any worldly Labour on a *Sunday*, except Works of Necessity, he shall forfeit 5 s. And crying or exposing to Sale any Wares, unless it be Milk or Mackarel, incurs a Forfeiture of the Wares to the Poor.

4. Butchers killing or selling Victuals, are liable to a Penalty of 6 s. and 8 d.

5. Carriers or Drivers, &c. travelling, 20 s. and Persons using Boats, &c. on a *Sunday*, (not allowed by a Justice of Peace) forfeit 5 s. Stat. 29 Car. 2. c. 7.

6. If any Person shall serve any Warrant, Process, &c. on *Sundays* (except in Cases of Treason, Felony, or Breach of the Peace) they shall answer Damages, as if done without Warrant, for false Imprisonment, and the Service be void. 22 Car. 2. c. 7.

7. If any one disturb a Minister in Preaching, Praying or Administering the Sacraments, Constables may apprehend him, and carry him before a Justice, &c. 1 M. c. 3.

C H A P. LXXXVIII.

Superseas.

About a Superseas.

1. **I**F a Constable have a Warrant to execute for Sureties of the Peace, and afterwards having a *Superseas* from the Court of Chancery, or *B. R.* or another Justice, &c. to discharge the Sureties, he still insists upon having the Party find Sureties, and he refuse, and is detained, it is false Imprisonment in the Constable. *Dalt.* 390. *Cb.* 118.

C H A P. LXXXIX.

Swearing.

About Swearing.

1. **B**Y *Stat.* 19 *Geo.* 2. c. 21. It is enacted, that from and after the first Day of *June*, 1746, if any Person shall profanely Curse or Swear, and be thereof Convicted, on the Oath of any one or more Witness or Witnesses, before any Justice of the Peace, &c. or by the Confession of the Party offending, every such Offender shall forfeit and lose the respective Sums therein mention'd (that is to say) Every Day Labourer, Common Soldier, Common Sailor, and Common Seaman, 1 s. every other Person under the Degree of a Gentleman, 2 s. and every Person of, or above the Degree of a Gentleman, 5 s. and in Case of a second Offence, to forfeit and lose Double, and for every other Offence after the second Conviction, Treble the Sum forfeited by any Offender, for profane Cursing and Swearing, as aforesaid. And it is thereby further enacted, that in Case any Person shall profanely Swear or Curse, in the Presence and Hearing of any Constable, or other Peace Officer, it shall and may be lawful for any such Constable or Peace Officer, and they are thereby authorized and required (in case any such Person shall be unknown to them) to seize, secure, and detain such Offender unknown to him, as aforesaid, and forthwith to carry him before the next Justice of the Peace, or other Chief Magistrate, where such Offence shall be committed, and the said Justice, &c. are thereby authorized and required, on Oath of such Constable, or other Peace Officer, to convict the Offender in the Manner therein directed; and in case such Offender shall be known to such Constable, or Peace Officer, they are thereby required speedily to make Information before some Justice

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Justice of the Peace, &c. in order that the Offender or Offenders may by such Justice be convicted thereof, in Manner and Form as therein directed. And that if any Constable, or other Peace Officer, shall wilfully and wittingly omit the Performance of his Duty in the Execution of this Act, and be thereof convicted, by the Oath of one Witness, before any Justice of the Peace, &c. every such Constable, &c. so offending shall forfeit 40s. to be levied and recovered by Distress and Sale of the Offender's Goods and Chattels, by Warrant under the Hand and Seal of such Justice, &c. to be disposed of, one Moiety to the Informer, the other to the Poor of the Parish where the Offence shall be committed, and in case no Distress can be had, then the Justice, &c. to commit the Offender to the House of Correction, there to remain and be kept to hard Labour for one Month. And that all Offences shall be prosecuted in eight Days after the Offence committed.

C H A P. XC.

Tithes.

1. **C**onstables and Headboroughs, by Virtue of a Warrant About Tithes:

from two Justices, are to levy the Money adjudged for refusing the Payment of small Tithes, by Distress and Sale in three Days, and they may retain the Charges for making the Distress.

2. Two Justices have Power to summon the Party, hear the Complaint by Witnesses on Oath, and give Judgment by making an Allowance for the Tithes, and ordering Costs not exceeding 10s. *Stat. 7 & 8 W. 3. c. 6. 10 & 11 W. 3. c. 15. & 6 Ann. c. 28.*

3. The Tithes are to be under 40s. *per Annum*, and Tithes due from Quakers under 10l. are thus recoverable. 1 G. 1. c. 7.

4. In *London* the Sums of Money settled in Lieu of Tithes, by 22 & 23 Car. 2. c. 15. are to be paid quarterly to the Parsons, &c. and upon Refusal or Neglect to pay the same, and Demand made on the Premises, the Lord Mayor, on Oath of such Refusal or Neglect, may grant Warrants for the Collector, with the Assistance of a Constable in the Day-time, to levy the same by Distress and Sale of the Party's Goods, &c.

C H A P. XCI.

Vagrants.

1. **B**Y Stat. 13 & 14 Car. 2. c. 12. by 12 Ann. c. 18. made perpetual, Constables, Headboroughs and Tithingmen, out of Purse for conveying Vagabonds, &c. to Houses of Correction, or Work-houses; they, the Churchwardens and Overseers of the Poor, and other Inhabitants in the Parish, may tax all chargeable by 43 El. c. 2. which Rate being confirmed under Hand and Seal by two Justices of Peace, the said Constables, &c. by Warrant under Hand and Seal of two Justices, may levy it by Distress and Sale of Goods.

2. In the same Act there is a Clause, enacting, that Justices of Peace in their Quarter-Sessions may cause to be transported, Rogues, &c. duly convicted and adjudged incorrigible, to the *English Plantations* beyond Sea.

3. One Justice of Peace may grant a Licence to Soldiers, Mariners, or Seafaring Men, to travel home, and they shall not be deemed Vagrants.

4. Any one Justice of Peace may license Labourers in Hay-time and Harvest, to pass from one County to another to work, but not to wander or beg. *Per Stat. 5 El. c. 4.*

5. Any two Justices of Peace may make a Testimonial to Serving-Men (or other Servants) departing from their Masters; but they must not wander up and down idly, nor beg.

6. None may be suffered to take Relief at any Man's Door, tho' within his own Parish, unless it be by order of the Overseers. Neither may any be suffered to beg by the Highways, tho' in their own Parish. If a Man gives Alms at his Door, unless to such Poor who is licensed to beg by the Overseers, he forfeits 10 s.

7. By Stat. 2 Ann. c. 6. lewd and disorderly Servants, Rogues, Vagabonds, and sturdy Beggars (not being Felons) by 39 El. c. 17. may be taken up, and sent into the Sea-SERVICE of his Majesty; but this seems to be repealed in Effect by Stat. 12 Ann. c. 23. of Vagabonds.

8. By Stat. 6 G. 1. c. 19. Justices of Peace within their respective Jurisdictions may commit Vagrants, and other criminal Persons charged with small Offences, for safe Custody, either to the common Gaol or House of Correction, as they in their Judgment shall think proper.

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A Commitment of a Vagabond to *Bridewell*.To the Keeper of *Bridewell* for the County of

9. Midd. ff. **W** Hereas A. B. *was lawfully*
passed from the Parish of C. D.
in the County of *to the Parish of*
 E. F. *in the said County, and has returned*
again into the said Parish of C. D. there to inhabit,
without a Certificate from the said Parish of E. F. where his
Settlement is, as appears by his own Confession: These are there-
fore to require you to receive the said A. B. into your Custody, and
punish him as a Vagabond, until he shall be from thence discharged
by due Course of Law. Given under my Hand and Seal, &c.

10. Tho' a Man have a certain Habitation, yet if he wander out of his own Parish begging, or otherwise misordering himself, he may be punished as a Vagabond. 2 *Roll. Rep.* 172. *The King against Hollinsworth.*

11. A Rogue who hath a Testimonial, if thro' his, or her Default they do not pursue the Order appointed by the said Testimonial, they are *toties quoties* to be whipped as Rogues; and so is a Rogue who shall carry his own Passport without a Guide.

12. No one is to be put out of the Town where he dwelleth, nor to be sent to the Place of his Birth or Habitation, but only a Vagabond-Rogue, such as wander abroad in the Country, and not such as beg in the same Town where they dwell. 2 *Salk.* 526.

13. If an hired Servant falling sick be turned out of Doors by her Master, and she begs in her Passage from the Place where she was at Service to the Place where she was born, adjudged no Begging to make a Vagrant. *Styles's Reports* 168.

14. Whoever is able to work, but will not, and wanders abroad, not having wherewith to subsist but by his Labour, is a Rogue. *Dalt.* 308.

15. Persons to be taxed for conveying Vagrants, &c. by 13 & 14 *Car.* 2. c. 12. are every Inhabitant of the Parish, viz. the Parson, Vicar, and all Occupiers of Houses, Lands, Tithes, and Woods; but a Landlord is not to be taxed in respect of his Rent, and this Tax or Rate must be confirmed under the Hands and Seals of two Justices.

16. If a Child be duly settled with Father or Mother, and they die or run away thence, it must there continue, and may not be sent to the Place of its Birth. *Lamb.* 207. See Chap. XXXIII, XLII, LVI.

A Warrant to the High Constable of the City and Liberty of *Westminster*, &c. to make a general privy Search.

To the High Constable of the City and Liberty of *Westminster*, and to all Constables and others his Majesty's Officers whom these may concern.

17. Middlesex and *Westminster*. THESE are in his Majesty's Name to will and require you the said High Constable, to issue out your Precepts to such and so many of your Petty Constables as you shall think necessary, and that you, together with them, taking to your Assistance a sufficient Number of Men, do make a general privy Search in the Night-time, the Day of *next*, in the Parish of

and Parishes thereto adjacent within your said Liberty, as you shall think convenient, in all Places in the said Parishes, where any common House or Place of unlawful Games shall be suspected to be holden, kept and maintained, and the Keepers of the same, and the Persons there haunting, resorting and playing, to apprehend; and also all Rogues, Vagabonds, and sturdy Beggars, to apprehend, and take, and bring the said Persons before us, or such others of his Majesty's Justices of the Peace as shall be assembled at the Vestry Room of the Parish of *on next*, at

o'Clock in the Forenoon, to the End they may be further dealt with according to Law. And you are hereby required to make a due Return of this our Warrant at the Time and Place aforesaid. Given under our Hands and Seals this, &c.

18. The Form of the Vagrant's Pass is prescribed by the Act of Parliament 13 G. 2. c. 24. See above Chap. XXXIII. *sect.* 12.

19. The Justice who shall make any Pass or Order for the passing or conveying any Rogue or Vagabond to the Place of his or her Birth, &c. shall, at the same Time with such Pass, cause to be delivered to the Constable, &c. a Certificate, ascertaining how the Person is to be conveyed, by Horse, Cart, or on Foot, and in what Time, and what Allowance such Officer is to have for conveying such Person to the Place he is to pass him, in the Form, and to the Effect set forth by the Stat. 13 G. 2. c. 24. See above *ib.* XXXIII. *sect.* 19.

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A Warrant to levy 20s. on a Constable for not conveying a Vagrant to the Place whither he was ordered to be sent.

20. Berks, to wit. **W** Hereas D. L. the Headborough of M. in the County of, &c. was ordered by a Pass to convey A. B. a Vagrant from the Parish of M. where he was taken wandering and begging, to the Parish of Q. in the County of, &c. where he was born, and where his last legal Settlement was, whither he the said D. L. was by the said Pass directed to convey the said A. B. but the said D. L. did not convey, or cause to be conveyed, (or did counterfeit a Certificate, Receipt or Note, or altered the Sum in the Certificate mentioned, as the Case is) the said A. B. to the Parish of Q. he being the Person really intended by the said pass to be conveyed thither, by Reason whereof he hath forfeited 20 s. These are therefore to require you forthwith to levy the said Sum of 20 s. on the Goods and Chattels of the said D. L. by Distress and Sale thereof, rendering to him the Overplus (if any such there be) and that you pay one Moiety thereof unto J. M. who first informed me of the said Offence, and the other Moiety to the Churchwardens and Overseers of the Poor of the Parish of, &c. where the said Offence was committed, for the Use of the Poor of the said Parish; and hereof fail not. Given, &c.

A Receipt from the next Constable, on Delivery of a Vagrant, to be indorsed on the Certificate.

21. **I** A. B. Constable of, &c. in the County of, &c. do hereby acknowledge, that I have received this Day, &c. of and from C. D. Constable of, &c. in the County of, &c. J. L. a Vagrant by the said C. D. brought thither in his Way to, &c. the Place of his last legal Settlement, by Virtue of a Pass granted by, &c. Witness my Hand, the Day and Year above written.

A Receipt for Money for passing Vagrants.

22. **R** Eceived this Day, &c. of A. B. High Constable of the Hundred of, &c. the Sum of, &c. for conveying J. L. a Vagrant, to the Town of, &c. being, the sum ascertained by the Justice's Certificate within mentioned. Witness my Hand this, &c.

E. M. Petty Constable of, &c.

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A Justice's Allowance and Taxation of a Constables Account for conveying Vagrants, to be added on the Foot of the Account.

23. **I** Having examined this Account of the Constables of, &c. for conducting and Entertainment of Vagrants, (by Virtue of Passes which were allowed, and signed by me) do think the same to be just and moderate, and hereby direct and order the same amounting to, &c. to be reimbursed to the High Constables of the Hundred, of, &c. for their Use. Witness my Hand, &c.

A Commitment of a Madman.

To the Keeper of the House of Correction for the County of B.

24. Berks, to wit. **W** Hereas it appears upon Oath unto us two of his Majesty's Justices of the Peace for the said County, that A. B. is a Lunatick, furiously mad, and dangerous to be permitted to go abroad: These are therefore to require you to receive the said A. B. into your Custody, and him safely keep secured and locked up, during such Time as such Lunacy or Madness shall continue; and if extremely outrageous and furious, then, if necessary, to chain the said A. B. and also to keep the said A. B. until discharged by due Course of Law. Given under my Hand and Seal, &c.

C H A P. XCII.

Warrants.

About Warrants.

1. **A** Constable is not to dispute a Justice of Peace his Warrant, although he exceeds his Authority; but if the Justice issues a Warrant to be executed out of his Jurisdiction, where he is not a Judge, or by a Constable out of his Precinct, &c. the Constable will be punished if he executes it. *Dalt.* 464, 465. Tho' where a Warrant is directed to a Constable by Name, commanding him to execute it, it has been held he may, if he will, execute it out of his one Precinct in any Place in the County. But if the Warrant be directed to all Constables generally, and not to one in particular by Name, no Constable can execute the same out of his Parish. *Chorley Village's*

Chap. 92.

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Village's Case, 1 *Salk Rep.* 176. It is at the Election of a Constable to carry an Offender apprehended before any Justice, if the Warrant be not special to bring the Offender before the Justice who granted it. 5 *Rep.* 59. A Justice of Peace his Warrant ought to specify the Cause of its being issued, and where a Warrant is lawful, any Contempt to it by throwing it in the Dirt, &c. may be punished by Fine or Indictment. *Crompt.* 149.

2. Where a Justice of Peace commands one being present to arrest another, who is also in his Presence, it is good, and is reputed as an Arrest made by the Justice himself. *Br. Faux Impr.* 33.

3. No one or more Justices of Peace can make a Warrant, upon a bare Surmise, to break any Man's House, to search for a Felon or stolen Goods; there must be a Felony actually committed, and sworn to, whereon to ground their Warrant. A Warrant directed by the Justice of Peace to two Men jointly to arrest another, &c. yet any one of them alone may do it; because it is done for the Execution of Justice, and for the publick Good. *Dalt.* 557. c. 169. A Warrant directed by a Justice of Peace to any Person but the Sheriff, he to whom it is directed must serve it himself; for he can command no other to do it, neither by Word nor Writing, nor make any Deputy. *Dalt.* 587. c. 169.

4. The Officer, to whom the Warrant is directed and delivered, ought with all Speed and Secrecy to find out the Party, and execute the Warrant; and if it be a Warrant for the Peace or good Behaviour, or in any Case where the King is Party, the Officer may break open Doors to take the Offenders; and if he is resisted or assaulted, he may justify the Beating and Wounding, &c.

5. A Justice of Peace his Warrant of the Peace ought not to be granted against a Peer of this Realm, or Peerefs, by Creation or Birth, but *B. R.* may; but if they are only Noble by Marriage, and the Husband dies, and then they marry beneath the Peerage, they lose that Dignity.

6. A Warrant from a Justice of Peace, to answer to such Things as shall be objected against the Party, without alledging any Cause (in Cases notailable) was said by *C. J. Coke* to be good in the Case, *Wilson ver. Dodd*, 1 *Roll's Rep.* 235. *Pl.* 15. *Hill.* 12 *Jac.* 1. But he cannot commit to Prison for certain Causes, but must alledge the Cause. *Boucher's Case*, *Mich.* 3 *Jac.* 1. *Cro. Jac.* 81. *Pl.* 4.

7. If the Warrant say it was dated at one Place, and it be dated at another Place in the same County; yet the Warrant is good, and it shall be taken to be dated where the Warrant doth say it was dated. It is best for a Justice of Peace to put his Hand and Seal to every Warrant.

8. A general Warrant, to search for Felons or stolen Goods, seems illegal; for it is hard to leave it to the Discretion of a common Officer to arrest what Persons, and search what Houses he pleases. *Hawk. P. C. Part 2. c. 13.* yet see a Precedent of this in *Dalt.* 114.

9. If a Justice issues out a Warrant to be executed out of his Jurisdiction where he has no Authority, and he is not a proper Judge, the Constable will be punished if he executes it, 14 H. 8. c. 26. *Lamb.* 67. *Dalt.* 465; and so he will if the Constable execute a Warrant that has apparent Mistakes in the Penalty required to be levied, or out of his Precinct. *Dalt.* 464.

10. An Order was made by two Justices, which was confirmed by the Sessions upon an Appeal; and it was directed to the Constables of, &c. but not to the Churchwardens or Overseers of the Poor. *Per Cur'*: Since the Constables have executed the Order 'tis well enough, tho' in Strictness they are not bound to obey it, tho' directed to them; for if a Justice directs a Warrant to any Person by Name, who is no Officer, the Person is not bound to obey it; but if he doth, and 'tis a Matter within the proper Jurisdiction of a Justice of Peace, the Warrant will bear him out, and he may justify under it. *Carthew's Rep.* 449. *Wangford and Brandon* Parishes in *Suffolk*, *Pasch.* 10 W. 3. B. R.

C H A P. XCIII.

Watches.

About
Watches.

1. Constables, &c. are to see that Night Watches be kept from Sun-set to Sun-rising, (in a City six Men at every Gate) who must be able Persons, Inhabitants of the Place, and watch by Turns, *Stat. Winchester, Ed. 1. c. 4.* and Persons refusing to serve on the Watch, on Complaint to a Justice, he may compel them, or bind them to the good Behaviour; and some Authors are of Opinion, that the Constable may put the Party in the Stocks for Contempt; but this seems rather to be when a Watchman is disorderly in doing his Duty. *Dalt.* 240.

2. The Watchmen appointed have a large Power in the Night to arrest Strangers, and others going armed, suspected Persons, &c. and to examine them; and whether they be Horsemen or Footmen, Drivers of Cattle or Carriages, or such as carry Burdens, &c. the Watch may stay them till Morning.

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ing, if they cannot give a good Account of themselves, their Company and Carriage, &c.

3. Watchmen are to apprehend Night walkers, Vagabonds, Persons going armed, &c. and they may arrest Strangers in the Night, and examine them; and if they find Cause of Suspicion, secure them till the Morning. Constables shall be aiding and assisting to the Watch, and the Watchmen are to obey their Orders in conveying Offenders to the Compter, &c.

4. If any will not obey the Arrest, the Watch may make Hue and Cry upon them: And for such Arrest of a Stranger (especially one suspected,) none is liable to Punishment.

A Warrant by Order of Sessions to keep Watch and Ward.

To the High Constable of the Hundred of, &c.

5. Beaks, to wit. **W** Hereas several Robberies, Felonies, and other Crimes have been lately committed in the County aforesaid, it was therefore ordered at the last Quarter Sessions of the Peace, held at C. for the said County, that Watch and Ward be duly set and kept, in all and every usual Place and Places within your Hundred; you are therefore to take Care that the same be done pursuant to the said Order; and you are likewise to apprehend all idle and suspicious Persons, and bring them before us, or some other of his Majesty's Justices of Peace for the said County, in order to proceed against them according to Law; and hereof fail not at your Peril. Given under our Hands and Seals, &c.

C H A P. XCIV.

Weights and Measures.

1. **T**HERE is to be one Measure, &c. throughout the Kingdom. *Magna Charta, 9 H. 3.* Every City, Borough, and Town is to have a common Balance, at which the Inhabitants may freely weigh their Goods bought and sold, and sealed Weights in the keeping of the Head-Officer or Constable there; otherwise the City forfeits 10 *l.* the Borough 5 *l.* and the Town 40 *s.* to the King. *Stat. 8 H. 6. c. 5.* Restrained only to Market-Towns or Towns Corporate, by 11 H. 7. c. 7.

2. Measures and Weights of Brass are to be sent to every City and Borough, and Mayors or Chief Officers in Cities and Boroughs,

Boroughs, shall have a special Mark for sealing of Weights and Measures, and take one Penny for sealing a Bushel, and a Half-penny for every other Measure, and for every Hundred Weight 1 *d.* Half a Hundred a Half-penny, and every less Weight a Farthing; and if they refuse, or delay to seal, shall forfeit 40 *s.* Sealing any Weight or Measure not agreeable to the Standard, or suffering Persons to sell or buy by other Measures, &c. incurs a Forfeiture of 5 *l.* 7 *H. 7. c. 4.*

3. Mayors, &c. shall view all Measures and Weights once a Year, break or burn those which are defective, and inflict a Penalty of 6 *s.* 8 *d.* *Stat. 11 H. 7. cap. 4.* Also an Indictment will lie for selling by false Weights and Measures, it being an Offence at Common Law as well as by Statute.

4. Constables may search and examine, if any Persons use other Measures than such as are *Winchester* Measure, and agreeable to the Standard in the *Exchequer*, and sealed, &c. and if they find any unsealed, they may break them, and present the Offenders at the next Quarter-Sessions. *Stat. 22 Car. 2. c. 8.*

5. Persons selling Corn or Salt by any Bushel or Measure, not according to the Standard, and struck even with the Brim, forfeit 40 *s.* and the Corn, &c. *Stat. 22 & 23 Car. 2. c. 12.*

6. If any Baker shall make or expose to Sale Bread wanting an Ounce of due Weight, he shall forfeit 5 *s.* and wanting less than an Ounce 2 *s.* 6 *d.* to be levied by a Constable. *Stat. 1 G. 1. c. 25.*

7. Bakers selling their Bread, consisting of Peck, Half-Peck, or Quarter Loaves, at a higher Price than set by the Lord Mayor of London, or by the Mayors, &c. of Towns, or two Justices of Peace where there are no Mayors, shall forfeit 10 *s.* to the Informer, to be levied by Distress by Constables, &c. *Stat. 3 G. 2. c. 29.*

8. Any one Justice of Peace, Mayor, &c. upon Proof by the Oath of one Witness, that a Man hath bought or sold by, or doth keep any other Weight or Measure, whereby any Thing is bought or sold than according to the Standard, may send his Warrant to the Churchwardens and Overseers of the Poor of the Place where the Offence is committed, or one of them, to give them Notice thereof, who are thereupon to levy by Distress and Sale of Goods five Shillings, rendering the Overplus; and if there be no Distress, he may commit the Offender to Prison, till he pay the same Forfeiture.

A Conviction of selling by false Weights and Measures.

9. **B**E it remembered, that A. B. on, &c. comes before me J. S. Esq; one of his Majesty's Justices, &c. and then and

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and there makes Oath, that C. D. on, &c. last past, did sell ten Bushels of Wheat in a Bushel or Measure not being agreeable to the Standard in his Majesty's Exchequer, but less than the same, contrary to the Statutes. I do therefore adjudge him the said C. D. guilty of the said Offence, and convicted thereof as the Law direct. Given, &c.

Indictment against a Constable for an Escape.

10. Berks, to wit. **T**HE Jurors, and so forth, That whereas one A. B. late of K. in the County aforesaid, Husbandman, was taken and arrested for feloniously stealing a Horse of one R. B. and afterwards, to wit, the 30th Day of April in the Year, and so forth, as aforesaid, was committed by J. S. Esq; one of the Justices of our said Lord the King, for keeping the Peace in the County aforesaid, to the Custody of R. G. the Constable of the Town aforesaid, to be carried to the Gaol in the County aforesaid, and that the said R. G. then and there had the said A. B. in his Custody for the said Felony; and that afterwards, the said 30th Day of April in the Year aforesaid, at the said L. in the County aforesaid, he the said R. G. voluntarily and feloniously permitted the said A. B. to go at large from the Custody of the said R. G. against the Peace of our Lord the King, his Crown and Dignity.

N. B. In an Indictment against a Constable for refusing to execute a Justice of Peace his Warrant, the Indictment must set forth the Nature and Tenor of the Warrant, or else 'tis not good. 1 Vent. 325.

Indictment against a Constable for not raising Hue and Cry.

11. Berks, to wit. **T**HE Jurors, and so forth, That the Day of and so forth, at H. in the County of S. certain Malefactors by Force and Arms, did make an Assault upon R. N. Yeoman, and five Pounds of Money numbered as the proper Money of the said R. N. then and there found, feloniously did take and carry away; whereupon the said R. N. instantly the same Day and Year aforesaid, came to the Town of B. in the County aforesaid; and then and there gave Notice to one J. O. being the then Constable of the said Town of B. that the said Malefactors had committed the said Felony in Manner and Form aforesaid; and then and there required the said J. O. to levy fresh Hue and Cry against the said Malefactors, and that he would command the Inhabitants of the said Town of B. to prosecute such Hue and Cry, as of Right and by the Law of the Land they ought to prosecute; yet the said J. O.

J. O. not at all minding the due Execution of his Office in this Behalf, did not levy the said Hue and Cry, nor command the said Inhabitants immediately to prosecute the said Hue and Cry; but then and there totally refused and neglected to do this, to the ill Example of others of his Majesty's Subjects, and against the Peace of our said Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in that Case made and provided.

Indictment against those who refuse to assist a Constable to apprehend a Felon.

12. Berks, to wit: **T**HE Jurors, and so forth, That R. G. of H. in the said County, Labourer, on the Day, and so forth, at H. aforesaid, in the County aforesaid, feloniously did take and lead away one Cow of the Goods and Chattels of one G. E. and whereas J. O. Constable of the Town of H. aforesaid, in the Day and Year aforesaid, at H. aforesaid, did command and require E. B. of H. aforesaid, and G. B. of the same, Yeomen, to help him the said J. O. then being Constable of H. aforesaid, to take and arrest the said Felon for the Felony aforesaid; yet the said E. P. and G. B. the Day and Year aforesaid, at H. aforesaid, did altogether refuse, and each of them did refuse to do it, in Contempt of our Sovereign Lord the King that now is, and against the Peace, and so forth.

The like may be against those who refuse to follow the Hue and Cry, being commanded by the Constable, or for refusing to assist a Constable; to convey Prisoners to the Gaol, or to bring them before a Justice of Peace, &c.

Churchwardens, Constables, and all other Parish Officers ought to take Notice of the following Resolution of the House of Commons.

Mar. 23. 1696. Declared and resolved that no Member of this House hath any Privilege against Payment of any Aids, Supplies, or Tax granted to his Majesty, or any Parish Duties.

THE

THE TABLE.

N. B. *The first Number denotes the Chapter, the second, the Paragraphs or Sections.*

	Ch.	Sec.
A <i>ADMISSION</i> , what it is, _____	2	13
<i>Alehouses</i> , _____	64	1, &c.
<i>Almage</i> , what it is, _____	4	8
<i>Appeals</i> from Orders of Justices, _____	36	1, &c.
_____	45	20, &c.
2. From Orders of Settlement or Removal, _____	32	28, &c.
_____	36	1
3. How soon to be lodged, _____	36	4, 5.
<i>Apprentices</i> , poor,		
2. To Sea-Service by two Justices, _____	35	31
3. Money to put them out, _____	32	12, &c.
4. To what Age, _____	32	7
_____	35	2
5. Money paid with them, and to whom, _____	32	11, &c.
_____	35	4, &c.
_____	35	33
6. Not pressed till 18 Years old, _____	35	35
_____	35	36
7. Regulations concerning them, _____	32	47, &c.
_____	35	30
8. Of Certificate-men, gain no Settlement, _____	35	26
9. Run into another Country, _____	32	49
10. At Land, till what Age, _____	35	2, &c.
11. Rules and Cases concerning them, _____	35	5, &c.
12. Who compellable to take them, and the Pe- nalty, _____	35	4
_____	35	24
13. Money not necessary with them, _____	35	6.
14. Where assignable, or not, _____	35	8.
_____	35	21
_____	35	37
15. How disposed of on Master's Death, _____	35	9
I	16.	<i>Appri-</i>

The TABLE.

	Ch.	Se ^a .
16. <i>Apprentices</i> . Indenture to place one out, _____	35	52
17. Ill treated, his Discharge, _____	32	48
_____	35	13
_____	35	56
18. See <i>Overseers, Removal, Settlements, Warrants</i> .		
<i>Appropriation</i> , what, and why so called, _____	3	2, &c.
_____	5	1, &c.
2. How made, _____	5	3, &c.
3. At first only to spiritual Persons, _____	5	4
4. When first came to Lay-Hands, _____	5	6
5. Brought in by the <i>Norman</i> , _____	5	7
6. Appropriate Church, how disappropriated, _____	5	3
_____	5	12
7. How endowed, _____	4	3
<i>Arrest</i> , when not to be of Persons going to Church, _____	30	14
<i>Articles</i> 39. Law Cases concerning them, _____	2	16
2. Parson, whether obliged to prove he read them, _____	2	17
<i>Avoidance</i> , by Institution only, _____	9	3
_____	9	10

B.

B <i>Assard</i> , who is so by Common, Civil and } _____	37	1
Canon Law, _____	37	2
_____	37	68
2. His Incapacity by Civil Law, _____	37	2
3. How incapable by Common Law, _____	37	2
4. General and Special, _____	35	5
5. Which cognizable by Justices, and whom, _____	32	50, &c.
_____	37	8
6. How to prevent Damage to the Parish, _____	32	50, &c.
_____	37	26, &c.
_____	37	41
7. Pregnant Mother's Examination, _____	37	11
8. After Examination, Warrant issues, _____	37	12
9. Warrant against reputed Fathers, _____	37	13
_____	37	19
10. Reputed Father's Recognizance, _____	37	17
11. Reputed Father or Mother, when and why } _____	32	50, &c.
committed, _____		
12. Mittimus for reputed Fathers, _____	37	15
13. How ordered after Birth, _____	37	20, &c.
14. Examination after Birth, _____	37	21
15. Father to be conven'd before Order made, _____	37	22
16. Summons for putative Father, _____	37	24
17. Order on putative Father, _____	37	30
18. Bond, when sued, _____	37	31

Bastard.

The TABLE.

<i>Bastard.</i>	<i>Ch.</i>	<i>Señ.</i>
19. Second Offence, when punishable, _____	37	70
20. Mother, when punishable, _____	37	38
_____	32	19
_____	32	52
_____	37	40
21. Commitment at Sessions, when, _____	37	44, &c.
_____	37	46, &c.
22. Reference by Sessions, when, _____	37	45
23. Order of Sessions on reputed Father, _____	37	44
_____	41	7
24. Corporal Punishment, _____	37	37, &c.
_____	37	55
25. Cases of Bastardy, _____	37	26, &c.
26. Father's Effects, how sold, _____	32	56
_____	37	41
27. Weekly Sum, how ordered, or not, _____	37	29
28. Concealing the Birth, when Murder, _____	32	53
29. The last Stat. 6 Geo. 2. c. 31. _____	37	51, &c.
<i>Barwy Houses,</i> _____	66	
<i>Beadle of a Parish, his Duty and Office,</i> _____	19	2
<i>Beggars, Laws against them,</i> _____	38	
2. Certificate for them, _____	39	
3. When whipped or transported, _____	33	11
_____	33	24
_____	42	5
4. None to beg in Highways, _____	33	2
_____	42	5
5. See <i>Poor, Vagrants.</i>		
<i>Benefit, Institution into it,</i> _____	2	12
_____	2	18
2. Qualification for it, _____	2	18, &c.
<i>Bishops, when first settled,</i> _____	1	3
2. When to settle an Allowance, _____	4	12
_____	6	13
3. May redress an unequal Church-Rate, _____	26	22
_____	26	42
4. May unite Churches, when and how, _____	27	3
<i>Bond. See Bastard, Resignation.</i>		
<i>Briefs. See Charity-Briefs.</i>		
<i>Bridges, by whom repaired,</i> _____	60	2, &c.
2. If in two Precincts, _____	60	4
3. Repaired by Prescription, _____	60	4
_____	60	13
_____	60	14
4. Repaired because of Toll, _____	60	5
5. Of Fines for not repairing, _____	60	7
6. Cases of repairing them, _____	60	9, &c.
	7.	<i>Bridges.</i>

The TABLE.

	<i>Ch.</i>	<i>Seat.</i>
7. <i>Bridges.</i> Order for repairing them, ———	60	25
8. <i>Constables</i> Duty about them, ———	67	
C.		
C <i>Arriages,</i> ———	68	
<i>Cattle,</i> ———	69	
<i>Certiorari,</i> by whom returnable, ———	45	18
<i>Certificate</i> for Poor, the Form, ———	39	5
2. How granted and attested, ———	39	1
3. Witnesses to make Oath, ———	39	2
4. Travelling Poor to have it, ———	39	8
5. Binding against all the World, ———	39	11
6. Of a Settlement, the Form, ———	53	52
<i>Chancel,</i> by whom repaired, ———	25	13
—————	26	3
—————	26	20
—————	26	27
—————	29	12
2. Seats there, belonging to whom, ———	25	13
3. Not included in the Church, ———	25	13
<i>Chapel,</i> how served, ———	1	15
<i>Charity-Briefs,</i> how soon to be read, ———	30	21
2. Church-wardens Duty about them, ———	30	19; &c.
<i>Churches,</i> their Sorts, ———	1	25
2. Their Institution, and when, ———	1	2, &c.
3. How built and endowed, ———	1	7
—————	1	14
4. When full, ———	2	14
5. Of Seats in Churches, ———	25	4
6. How rebuilt, ———	26	14
7. Of Church-yards, ———	26	16
—————	26	28
8. Of Burial-Grounds, ———	25	19
9. Reparations, what and how made, ———	26	1, &c.
10. New Additions, when, or not, ———	26	32
—————	26	33
11. Union of them. See <i>Bishops, sect.</i> 4. ———	27	1, &c.
12. Lands, how settled to the Church, ———	25	21
13. Church-yard, Crime to quarrel there, ———	30	14
14. Penalty of absenting from, ———	30	1
—————	30	10
15. Prescription for Seats, ———	25	10, &c.
16. Repairing intitles to what Seat, ———	25	12
17. Prescription for a Way to Church, ———	26	29
—————	26	48
<i>Church-Rate,</i> how made, and by whom, ———	26	1, &c.
	<i>Church-Rate,</i>	

The TABLE.

<i>Church-Rate,</i>		<i>Ch.</i>	<i>Se.</i>
_____	_____	26	20
_____	_____	26	22
2. On whom chargeable, and when, _____	_____	26	7, &c.
_____	_____	26	11, &c.
_____	_____	26	33, &c.
3. By whom collected, _____	_____	26	5
4. How to be applied, _____	_____	26	14, &c.
5. Remedy if not equal, _____	_____	26	22
_____	_____	26	42
6. Precedents of it, _____	_____	26	43
<i>Church wardens, their Origin and Office,</i>	_____	20	2, &c.
2. How chosen, _____	_____	20	4, &c.
_____	_____	25	25
3. Their Oath, before whom, _____	_____	20	5
_____	_____	20	7, &c.
4. Who not to be chosen, _____	_____	20	10
5. To prevent or present, what and how, _____	_____	21	1, &c.
_____	_____	30	4
6. What Actions they may bring, _____	_____	22	
7. Actions against them, _____	_____	24	
8. Their Accounts, how made, _____	_____	23	
9. Cannot act till sworn, _____	_____	20	11
10. Their Power about the Church, _____	_____	25	
11. Their Power about Divine Service, _____	_____	25	15, &c.
_____	_____	30	4
12. Their Duty about Publick Houses, Swear- } ers, Fire Engines. _____ }	_____	30	6
_____	_____	30	9
_____	_____	30	16, &c.
13. When to be cited, _____	_____	21	4
_____	_____	29	7
_____	_____	31	3
14. Committed as Overseers, _____	_____	46	24
15. When to join with Constables, _____	_____	30	31
16. See <i>Charity-Briefs, Churches and Church-Rates.</i>			
<i>Clerk. See Parish Clerk.</i>			
<i>Consent of Justices to a Parish Officer's setting</i> }		32	21
<i>up Trade,</i> _____ }			
<i>Consolidation. See Bishops, 4.</i>			
<i>Constable, High, Etymology of it,</i> _____		61	2
2. Original of the Office, _____		61	3, &c.
3. Where chosen, _____		61	10
_____		61	11
4. Nature of the Office, _____		61	8
5. His Duty and Power, _____		62	9
6. His Precept to Petty Constables, _____		62	8
_____		81	2
			<i>Constable,</i>

The TABLE.

<i>Constable.</i>	<i>Ch.</i>	<i>Seet.</i>
7. See <i>Petty Constable, per tot.</i>	81	3
<i>Constable, Petty, Nature of his Office,</i>	61	5
2. When chosen or appointed,	62	10
3. Who exempted,	61	10
4. His Qualifications,	61	11
5. May make a Deputy,	61	11
6. Penalty of refusing to serve,	61	14
7. Removable by Sessions,	61	15
8. Cases concerning them,	61	16
9. How chosen in <i>London,</i>	61	18
10. His Duty and Office in <i>London,</i>	61	19
11. To attend Assizes and Sessions,	61	20
12. To return Warrants,	61	21
13. Action against him, where laid,	62	12
14. Voluntary Escape, when Felony,	61	25
15. When may break open Doors,	61	26
16. Must not dispute Warrant,	61	27
17. False Imprisonment against him,	61	30
18. May sell Offenders Goods, when,	61	30
19. Justifies in false Imprisonment,	61	31
20. When to serve a Warrant in Person,	61	33
21. When to retake a Prisoner, or not,	61	35
22. Chuse what Justice, &c. when,	61	37
23. May require Assistance,	61	38
24. May plead not Guilty,	61	41
25. What Money to levy,	61	45
26. His Duty and Office about Alehouses,	61	49
27. Bastardy,	61	61
28. Bawdy-Houses,	61	62
29. Bridges,	61	63
30. Carriages,	64	
31. Cattle,	65	
32. Conventicles,	66	
33. Distresses,	67	
34. Drunkenness,	68	
35. Escapes,	69	
36. Highways,	70	
37. Hue and Cry,	71	
38. Inns,	72	
39. Juries,	73	

Constable,

<i>Constable</i>
40.
41.
42.
43.
44.
45.
46.
47.
48.
49.
50.
51.
52.
53.
54.
55.
56.
57.
58.
59.
60.
61.
<i>Conver</i>
<i>Cottage</i>
2. I
3. I
4. C
<i>Curate</i>
2. I
3. C
4. I
5. I
6. I
<i>Cures,</i>
D
3.
<i>Dispen</i>

The TABLE.

<i>Constable,</i>	<i>Ch.</i>	<i>Set.</i>
40. ——— Lamps, ———	78	
41. ——— Land-Tax, ———	79	
42. ——— Ministers disturbed, ———	80	
43. ——— Presentments, ———	81	
44. ——— Prisoners, ———	82	
45. ——— Recusants, ———	83	
46. ——— Robbery, ———	84	
47. ——— Servants, ———	85	
48. ——— Soldiers, ———	86	
49. ——— Sunday, ———	87	
50. ——— Superseades, ———	88	
51. ——— Swearing, ———	89	
52. ——— Tithes, ———	90	
53. ——— Vagrants, ———	33	<i>Passim.</i>
———	91	
54. ——— Warrants, ———	92	
55. ——— Watch, ———	93	
56. ——— Weights and Measures, ———	94	
57. ——— His Oath, ———	63	2
58. ——— Form of his Presentments, ———	81	4
59. Allowance of his Accounts, ———	33	8
———	33	26
60. Receipts for Money, ———	33	20
61. Reimbursed for passing Vagrants, ———	33	8
———	33	27
<i>Conventicles,</i> ———	70	
<i>Cottage, for Poor, how erected,</i> ———	32	7
———	40	1
2. Petition for erecting it, ———	40	3
3. Lord's Consent to erect it, ———	40	4
4. Order of Sessions for it, ———	40	5
<i>Curate, how first made,</i> ———	6	1
2. To take Licence, and why, ———	6	3
———	6	12
———	6	13
3. Of what Estate capable or not, ———	6	6
———	6	7
4. How may recover his Salary, ———	6	8
5. May take a Lease of Benefice, ———	6	11
6. His Stipend appointed, ———	6	13
<i>Cures, which to lapse,</i> ———	6	1

D.

D <i>Ilapidations, what,</i> ———	29	2
2. Action for them, ———	29	5
3. Money recovered, laid out, when, ———	29	6
<i>Dispensation for Pluralities,</i> ———	9	5, &c.
C c		<i>Dissenters</i>

The TABLE.

	Ch.	Set.
<i>Diffenters</i> , how legally to assemble, —	30	2
<i>Distress</i> for Rent, not to be in the Highway, —	58	95
2. When may be taken in the Highway, —	58	96
3. Constables Duty, &c. —	71	
<i>Donative</i> , —	13	7
<i>Drunkenness</i> , —	72	
E.		
E <i>Scapes</i> , —	73	
F.		
F <i>Ire-Engines</i> , how provided, —	17	14
—	17	15
—	30	16
<i>Forfeitures</i> . See <i>Poor</i> , <i>sect.</i> 18.		
G.		
G <i>Arba</i> , what, —	4	8
<i>Glebe</i> , charged to Church-Rate, or not, —	26	44
H.		
H <i>Highways</i> . See <i>Scavenger, Warrant</i>		
2. The Sorts of Ways, —	58	1
3. To whom the Soil belongs, —	58	3
—	58	60
4. If bad, Travellers may go on Outlets, —	58	5
—	58	72
5. By whom repaired, —	58	7, &c.
6. Who chargeable to them, —	58	6, &c.
—	58	91, &c.
7. Trust Land for Highways, —	58	13
8. Statute-Work how enforced, —	58	15
—	74	
9. Who to send Teams, —	58	23
10. Penalties, how to be levied, —	58	27
11. Incumbering them, the Penalty, —	58	30, &c.
12. Matters, where determined, —	58	35
13. Out of Repair, the Presentment, —	58	38
14. Special Sessions for them, —	58	39
15. Justices Power about them, —	58	41
16. Neglect, how punished, —	58	44
—	58	53
17. Form of Presentment, —	58	54
18. Enlarged, how, —	58	61
19. Illegal Carriages, —	58	62, &c.
—	58	66, &c.
20. Session's Power, —	58	86
21. Assessment, how made, and the Form, —	58	61

Highways.

The TABLE.

<i>Highway.</i>	<i>Ch.</i>	<i>Seet.</i>
22. Not extinguish'd by Unity of Possession, —	58	87
23. What gives a Right to inclose, —	58	93
24. Statutes for particular Places, —	58	105
25. Penalty of breaking Turnpikes, —	58	109
	58	127, &c.
	58	131, &c.
26. Appointment of Turnpike Receiver, —	60	36
27. Adjudication of Turnpike-Road finished, —	60	37
28. Surveyors, how chosen, —	59	17, &c.
29. When Surveyors may cut Hedges, —	58	133
<i>Hospital Lands</i> rateable to the Poor, —	50	15
<i>Houses of Correction.</i> See <i>Beggars</i> 4. <i>Vagrants.</i>		
2. Statutes concerning them, —	32	15, &c.
	42	1, &c.
3. Who to be sent thither, and the <i>Mittimus</i> , —	42,	3, &c.
	42	8
<i>Hue and Cry,</i> —	75	

I.

I <i>Mpropriation</i> , what, —	5	1
2. Become Lay-fee since the Reformation, —	5	13
3. To repair the Chancel, —	26	17
<i>Incumbent</i> , who, —	2	3, &c.
2. On his Death, who pays the Curate, —	6	5
3. Must be in Holy Orders, —	2	4
4. What he must do after Induction, —	2	15, &c.
	2	21, &c.
	13	1, &c.
5. What Statutes to read, —	13	1
6. To take Oaths, —	2	18, &c.
	2	21, &c.
7. His other Duties, —	13	1, &c.
8. See <i>Parson</i> ,		
<i>Indenture</i> to place out poor Apprentice, —	35	52
<i>Indictment</i> , for striking in a Church yard, —	31	15
2. For obstructing an Highway, —	60	34
3. Against a Constable for an Escape, —	94	10
4. Against a Constable for not raising Hue and Cry, —	94	41
5. For refusing to assist to take a Felon, —	94	12
6. If of two Parishes jointly, —	58	120
7. When to conclude to the common Nuisance, &c. —	58	123
<i>Induction</i> , —	2	13
<i>Infant</i> , signs his Presentation, —	2	9
	2	28
<i>Information</i> , for drawing with too many Horses, —	60	23
<i>Institution.</i> See <i>Benefice</i> .		
2. Make an Avoidance, —	9	3

The TABLE.

	Ch.	Sec.
<i>Justices</i> , to tax an Allowance for passing Vagrants,	33	25
2. To compel Payment of Rates for passing Vagrants,	33	26
3. Of Liberties, where to act,	35	43
	37	75
4. How may raise Money to provide for Poor,	41	3
5. When examine, on Oath, Vagrants,	33	6
	33	11
6. Their Power about Removals,	45	1, &c.
7. Compellible to sign Poor's Rates,	46	22
8. How commit Church wardens,	46	24
9. One may enable Parish Officers to set up a } Trade,	46	28
10. Their Power about Poor's Rates,	50	15, &c.
11. Compellible to make Poor's Rates,	50	18
12. Cannot order Houses for the Poor,	53	62
13. Whom to send to House of Correction,	33	2
	42	6
14. Presentment by one,	60	40
15. Their Certificate for a Lamp,	60	47
16. How to direct their Warrants,	61	51
17. See <i>Highways</i> , <i>sect.</i> 14, 15.		

L.

<i>L</i> <i>Apse</i> , when incurs, or not,	2	26
	9	10
	10	16, &c.
2. When not before Notice to Patron,	2	27
	10	3
3. How cured,	2	28
<i>Lecturer</i> , his Duty,	7	2
2. Must have Bishop's Licence,	7	3
3. How to recover his Salary,	7	4
4. How chosen,	7	1
<i>Library Parochial</i> ,	13	9, &c.
<i>Licence</i> , necessary to Lecturer,	7	3
2. To travel on Horseback on Sunday,	31	9
3. To travel by Water on Sunday,	31	10
4. To Soldiers and Sailors,	54	
<i>Lights</i> to be hung out,	59	17
2. A Warrant and Certificate about them,	60	46
	60	47
<i>London</i> , Method of chusing Constables there,	61	20
2. Clergy there, how to recover Tithes,	12	15
	12	16
3. Clergy, how provided,	22	16, &c.
4. See <i>Constables</i> , <i>sect.</i> 7.		

Lunatick,

The TABLE.

	<i>Ch.</i>	<i>Scd.</i>
<i>Lunatick</i> , how ordered, _____	33	30
_____	33	31
_____	91	24

M.

M *Adman.* See *Lunatick*.

<i>Mandamus</i> lies to swear a Churchwarden,	20	5
2. To Justices, to make or sign a Poor's Rate,	50	18
3. To restore a Sexton,	16	2
<i>Master</i> and Servant, _____	35	1, <i>£</i> c.
_____	51	1, <i>£</i> c.
2. And Apprentice, _____	35	1, <i>£</i> c.
3. Of a Ship to carry Rogues abroad,	33	24
4. Abusing his Apprentice,	32	48
_____	35	13, <i>£</i> c.
<i>Minister</i> , Penalty of disturbing him in Divine Service,	30	8
2. See <i>Charity Briefs</i> , <i>sect.</i> 1.		
<i>Mother.</i> See <i>Murder</i> .		
<i>Murder</i> , in concealing Death of Bastard, _____	32	53

N.

N <i>Office</i> , when necessary to cause a Lapse, —	2	27
_____	10	3
_____	10	16
2. Of Appeal, necessary,	32	38
3. Paying Taxes, Notice of what,	32	25
4. Of an Appeal,	37	7
5. Of Poor's Settlements,	32	25
_____	53	17
_____	53	34

O.

O <i>Blations</i> , _____	1	4
_____	12	9
<i>Orders</i> of Justices, _____	45	1, <i>£</i> c.
_____	45	24, <i>£</i> c.
2. Of Settlement or Removal,	45	10, <i>£</i> c.
_____	53	50
3. Concerning Overseers,	46	15
4. Of Removal, what to set forth,	45	15
_____	53	50
5. Conclusive, if confirmed on Appeal, —	45	8
_____	45	20
_____	53	54
6. Good till repealed, _____	45	7
7. Of Removal, to whom directed,	45	17
_____	53	56

The TABLE.

	Ch.	Se.
8. Orders of Removal, when too general, ————	45	26
—————	53	59
—————	53	60
9. To pay 2s. for taking up a Vagrant, ————	57	7
Order of Sessions, ————	45	5, &c.
2. About Poor, ————	45	5, &c.
—————	53	53, &c.
Ordinary. See Bishop.		
Organist, of a Parish, how chosen, ————	15	
Ornaments. See Churches.		
Overseers of the Poor, appointed, ————	32	6
—————	46	3
2. Their Office, ————	32	6
—————	32	7
—————	46	1, &c.
3. When to meet, ————	32	7
—————	46	3
4. May set up any Trade, ————	32	21
5. When to be chosen, ————	32	6
—————	46	2
6. When to account, ————	32	7
—————	46	5
7. For what to account, ————	46	5
—————	46	8, &c.
8. Need not disburse their own Money, ————	46	11
—————	50	20
9. Action brought against them, ————	46	13
10. How compellible to account, ————	46	7
—————	46	17
11. Not appointed by Sessions, ————	46	25
12. When not bailable, ————	46	24
—————	50	11
13. May put out Apprentices, ————	32	7
14. See Parish Officers.		

P.

P arents of Poor to relieve them, ————	44	4
—————	50	8
—————	53	29
2. Leaving Families on Parishes, ————	32	20
—————	41	3
Parishes, their Original, ————	1	6
—————	1	7
—————	1	11, &c.
2. Perambulation of them, ————	1	22
3. Law Cases concerning them, ————	1	17
—————	1	21
4. Parishes,		

The TABLE.

	<i>Ch.</i>	<i>Sec.</i>
4. <i>Parishes.</i> Towns stand for Parishes, where,	47	1
5. In Reputation, chuses Officers,	45	22
	47	1
6. Part in different Counties,	47	2
	46	12
	47	9
7. Not to be dismembered by Justices,	47	10
8. Defined,	2	1
9. To employ Poor, &c.	33	29
<i>Parishioners</i> , may prescribe to chuse Vicar,	3	5
2. Chuse Parish-Clerk by Custom,	14	2
3. Who is a Parishioner,	46	14
	53	
<i>Parish-Clerk</i> , his Origin, and how chosen,	14	1
	14	2
2. By whom he may be put out,	14	2
3. His Qualifications,	14	1
	14	3
4. His Duty,	14	4
5. Is not a Corporation,	14	5
6. Advice about him,	15	7
7. Incorporated in <i>London</i> ,	14	6
<i>Parish Officers</i> , may use Trades, when,	46	28
<i>Parish Registers</i> ,	13	3
	13	4
<i>Parson</i> , his Duty about Marriages,	13	2
2. His Duty about Burials,	13	3
3. His Duty about Registers,	13	4
4. When exempt from Church-Rates, or not,	26	35
	26	44
<i>Patronage</i> ,	1	8, &c.
<i>Penalties</i> , to the Poor,	48	
<i>Pews</i> ,	25	4
	25	5
<i>Pluralities</i> , Statutes of them eluded,	9	4
2. How a Chaplain to act,	9	10
3. Laws concerning them,	9	2, &c.
<i>Poor</i> . See <i>Apprentice</i> , <i>Bastard</i> , <i>Beggar</i> , <i>Notice</i> , <i>Overseer</i> , <i>Parish-Officer</i> , <i>Removal</i> , <i>Settlement</i> , <i>Trade</i> , <i>Vagrant</i> , <i>Workhouse</i> .		
2. Not effectually relieved,	32	2
3. Corporations might relieve them,	32	2
4. Formerly supported by Monasteries,	32	3
5. Statutes concerning them,	32	5, &c.
6. Of a Parish, who are,	32	22
7. Coming with Certificate,	32	22
	32	28
C c 4		8. <i>Poor</i> ,

The TABLE.

	<i>Ch.</i>	<i>Se.</i>
8. Poor, When relieved by Order of Justices,	32	28
9. To be registered in Parish-Book,	32	31
	32	26
	32	32
	34	7
10. Soldiers discharged may use Trades,	32	58
11. Begging may be apprehended,	33	2
12. May be relieved privately,	34	3
13. To wear a Badge,	32	28
	34	4
14. Families left on Parishes,	32	20
	41	5
15. Of their Maintenance,	32	31, &c.
	50	1, &c.
16. Orders concerning them,	45	1, &c.
	53	56, &c.
17. Whether sent to extraparochial Places,	47	3
18. Forfeitures to them,	48	22, &c.
19. Prisoners, how provided for,	32	8
	49	1, &c.
	82	
20. Parents compellible to relieve them	44	4
	50	8
21. Contract for lodging Poor,	32	33
	57	13
Poor Rates, how made,	32	7
	50	6
	50	21
2. On whom,	32	7
	50	1
	50	4
	53	72
3. How levied,	50	3
4. When other Parish taxed,	50	4
5. Relief against unequal Rate,	50	5
6. By whom made,	50	6
	50	7
7. Power of Justices therein,	50	4
	50	7
	50	22, &c.
8. Must be according to yearly Value,	50	9
9. For what Time to be made,	50	14
10. Cases concerning them,	50	10, &c.
11. Warrant to distrain from them,	50	25
12. Form of a Poor's Rate,	50	21
Presbyters, when first ordained,	1	4
Presentation, the Form.	2	7

Prisoners,

*Prisoner
Punishment*

2. C

3. C

Q

R

Rector

2.

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Remon

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4.

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6.

Repa

Refig

2.

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Revu

Road

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7

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The TABLE.

	Ch.	Se ^a .
<i>Prisoners.</i> See <i>Poor</i> , <i>sect.</i> 19.		
<i>Punishment of Parents of Bastards,</i> ———	32	19
—————	37	37
—————	37	55
2. Of Fathers leaving Families on the Parish, ———	32	20
—————	41	3
3. Of Vagrancy, ———	33	1, &c.

Q.

Q <i>Uare Impedit</i> , to name the Bishop, ———	3	28
--	---	----

R.

R <i>Reader</i> , who, &c. ———	8	
<i>Recognizance</i> , of Bastardy, ———	37	17
<i>Rector</i> , who is, ———	3	2
2. Is Patron of the Vicarage, ———	4	10
3. Compellible to augment Vicarage, ———	4	12
4. Must be in Priest's Orders, ———	2	4
5. Requisites on his Induction, ———	2	15, &c.
<i>Removal of Poor</i> , in what Case, ———	39	10, &c.
—————	51	1, &c.
—————	53	14, &c.
2. From what Time 40 Days accounted, ———	51	2
3. By illegal Order, not good, ———	51	5
4. Regular Method therein, ———	51	1, &c.
—————	51	7
5. By Practice, sent back, ———	53	4
6. See <i>Orders</i> , <i>Settlements</i> .		

Reparation. See *Churches*, *sect.* 8.

<i>Resignation</i> , Bonds of it, ———	11	1, &c.
2. Must be accepted by the Bishop, ———	11	5
3. Condition of the Bond, ———	11	6
<i>Reward</i> , for bringing Fire Engines, ———	30	17

Road. See *Highways*.

Rogue. See *Vagrants*.

S.

S <i>Scavengers</i> , Acts concerning them, ———	59	1, &c.
2. Their Duty, ———	59	5, &c.
3. Where to lay Dirt, ———	59	7
4. Assessment for them, how made, ———	59	11
5. When to account, ———	59	15
6. Penalties, how recovered, ———	59	15
7. Penalty on Refusal to serve, and how levied, ———	59	4
—————	59	15
—————	60	41
8. Keeping Swine in London, ———	59	8

Scavengers,

The TABLE.

<i>Scavengers,</i>	<i>Ch.</i>	<i>Se.</i>
_____	59	21
<i>Seats. See Church, sect. 4.</i>		
<i>Sequestration of vacant Benefices,</i>	28	2
_____	29	13
2. Method of taking it out,	28	2
_____	29	7
3. May be superſeded, and granted to others,	29	7
4. If granted when the Living full,	29	9
5. Issues in Caſe of a Spoliation,	29	11
6. Method of it on a Judgment,	29	13
7. Not where a Leaſe of Tithes,	29	13
<i>Sequeſtrators, Churchwardens may be compelled } to be,</i>	29	7
2. Muſt account to new Incumbent,	29	8
3. Not to commit Waſte,	29	10
4. To account to him who has the Right,	29	11
<i>Servant, who compellible to ſerve,</i>	32	40
_____	32	47
_____	52	1
2. Who to work at Harveſt,	32	46
_____	52	3
_____	32	25
3. Who gains a Settlement,	32	29
4. Not to be turned away ſick,	52	5
5. Inticing him, not indictable,	35	25
_____	52	6
6. Aſſaulting Maſter,	32	45
_____	35	13
7. Shewing falſe Teſtimonial,	32	41
_____	52	9
<i>Seſſions need not give a Reaſon for their Judgment,</i>	53	70
<i>Settlement, by what Purchase gained,</i>	32	36
_____	53	3
2. By what Service gained,	32	25
_____	32	29
_____	35	23, &c.
_____	53	15, &c.
3. By Birth,	37	60
_____	37	65
_____	44	2
_____	53	2
_____	53	38
4. By Birth, how defeated,	37	66
_____	53	2
_____	53	28
_____	56	6
5. By Eſtate,	32	36

Settlement,

Settlement,

6. Of

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Sewers in

Sexton, h

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4. Fo

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Sine-Cur

Soldiers,

Streets,

2. In

3. H

4. A

Sunday,

The TABLE.

Settlement,	Ch.	Seet.
_____	53	28
_____	53	31, &c.
6. Of Wife regularly with her Husband, _____	53	5
7. Nurse Children, till what Age, _____	53	6
8. The last takes place, _____	33	4
_____	53	17
9. Cases of Settlements, _____	35	22, &c.
_____	53	2, &c.
10. By what Apprenticeship not gained, _____	35	26, &c.
_____	35	51
11. By what Payments gained, or not, _____	53	3
_____	53	16
12. When not gained by Birth, _____	53	2
_____	53	40
13. When follows the Father, _____	53	12
_____	53	38
_____	53	47
_____	56	6
14. Favourably expounded, _____	53	43
Sewers in London, &c. _____	59	20
Sexton, how chosen, _____	16	1
2. His Office, _____	16	1
3. Mandamus lies for him, _____	16	2
4. Where indicted for Felony, _____	16	3
Sidefman, his Origin, _____	20	2
_____	31	1
2. How chosen, _____	31	2
3. See Churchwardens, per tot. _____		
Simony, what, _____	10	1, &c.
_____	10	10, &c.
_____	10	21
2. The Penalty for it, _____	10	1, &c.
_____	10	10, &c.
_____	10	18
3. Cases of it, _____	10	9, &c.
4. Forfeiture for it, _____	10	2
_____	10	16
5. Makes the Presentation void, _____	10	1
_____	10	16
6. Oath against it, _____	10	22
Sine-Cures, their Original, _____	3	4
Soldiers, which may set up Trades, _____	32	58
Streets, by whom to be swept, _____	59	6
2. In London, &c. paved by Inhabitants, _____	59	8
3. How paved in Market-Towns, _____	59	12
4. Ancient, how paved in London, _____	59	14
Sunday, _____	30	5, &c.
		Sunday,

The TABLE.

<i>Sunday,</i>	_____	_____	_____	<i>Ch.</i>	<i>Sec.</i>
	_____	_____	_____	87	1, &c.
<i>Surveyors of the Highways. See Highways.</i>	_____	_____	_____		
<i>Weavers,</i>	_____	_____	_____	30	9
	_____	_____	_____	89	
<i>Swine in London, &c. Prohibited,</i>	_____	_____	_____	59	8
	_____	_____	_____	59	21
<i>Synodsmen. See Sidesmen.</i>	_____	_____	_____		

T.

T <i>Estimonial, to whom granted,</i>	_____	_____	_____	32	30
	_____	_____	_____	52	7
	_____	_____	_____	54	
<i>Tithes, paid by the new Church to the old, where,</i>	_____	_____	_____	1	16
2. <i>What is small Tithes,</i>	_____	_____	_____	4	7, &c.
	_____	_____	_____	12	7
	_____	_____	_____	12	33
3. <i>Rules concerning them,</i>	_____	_____	_____	12	6, &c.
	_____	_____	_____	12	10, &c.
	_____	_____	_____	12	33
4. <i>Cases of Tithes,</i>	_____	_____	_____	12	2, &c.
5. <i>Recovery against Quakers,</i>	_____	_____	_____	12	11
	_____	_____	_____	90	3
6. <i>When sued for in the Exchequer,</i>	_____	_____	_____	12	14
7. <i>Where sued for by London Clergy,</i>	_____	_____	_____	12	15
	_____	_____	_____	90	4
8. <i>Definition and Division of them,</i>	_____	_____	_____	12	5
	_____	_____	_____	12	6, &c.
9. <i>Table of them,</i>	_____	_____	_____	12	33
<i>Trades to employ Poor,</i>	_____	_____	_____	32	21
	_____	_____	_____	55	
2. <i>Set up by Overseers,</i>	_____	_____	_____	32	21
3. <i>Set up by Soldiers,</i>	_____	_____	_____	32	58
<i>Turnpikes. See Highways.</i>	_____	_____	_____		
<i>Tithes. See Tithes.</i>	_____	_____	_____		

V.

V <i>Agabonds. See Vagrants.</i>	_____	_____	_____		
<i>Vagrants, who are,</i>	_____	_____	_____	33	2, &c.
	_____	_____	_____	56	1, &c.
	_____	_____	_____	91	1, &c.
2. <i>How apprehended and treated,</i>	_____	_____	_____	33	<i>Passim.</i>
3. <i>Rates for passing them, how raised,</i>	_____	_____	_____	33	<i>Passim.</i>
	_____	_____	_____	91	1
4. <i>Whether guilty of Felony by returning from } Transportation,</i>	_____	_____	_____	33	15
5. <i>Must be whipped,</i>	_____	_____	_____	33	<i>Passim.</i>
6. <i>Vagrants, when to be sent to the House of } Correction,</i>	_____	_____	_____	33	<i>Passim.</i>

Vagrants,

Vagrants

7. W
8. T
9. F
Vestry,
2. M
3. E
4. O

5. S
6. V
7. T
for

8. T
9. C
Vicar,
2. M
3. M
4. V

5. I
6. I
B

Vicars
2.

3.
Union

W
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.

The TABLE.

<i>Vagrants.</i>	<i>Ch.</i>	<i>Se.</i>
7. When transported, _____	33	14
8. To be carried to <i>Ireland</i> , _____	33	24
9. Form of their Pass, _____	33	14
<i>Vestry</i> , what, _____	17	1
2. Method of calling it, _____	17	2
3. Exclusion from it gives an Action, _____	17	3
4. Of whom to consist, _____	17	3
_____	17	4
5. Select Vestries, how supported, _____	17	4
_____	17	6
6. Vestries of several new Churches, _____	17	7, &c.
7. To provide Fire-Engines, and assess Rates } for them, _____	17	14
_____	17	15
8. To be consulted about Workhouses, _____	17	15
9. Choice and Duty of Vestry Clerks, _____	18	
<i>Vicar</i> , where chosen by Prescription, _____	3	5
2. Must be instituted and inducted, _____	4	2
3. May claim Dues by Prescription, _____	4	6
4. Where shall have the Tithes, _____	3	2
_____	4	7
_____	5	10
5. Hath the Freehold of the Church, _____	4	9
6. His Allowance when to be settled by the } Bishop, _____	4	12
_____	5	11
<i>Vicarage</i> , when presumed to be endowed, _____	4	4
2. Laws for endowing Vicarages, _____	4	3
_____	4	12
3. Laws for augmenting Vicarages, _____	4	12
<i>Union</i> . See <i>Bishops</i> , sect. 4.		

W.

W arrant to levy Penalty on a Constable } not conveying a Vagrant, _____	91	20
2. To confine a Madman, _____	91	24
3. To keep Watch and Ward, _____	93	5
4. Against Constables not returning Lists, _____	60	18
5. For refusing to serve as Surveyor, _____	60	19
6. For not erecting a Mercury, _____	60	20
7. Against Surveyor refusing to account, _____	60	21
8. Against Surveyor refusing to pay Balance, _____	60	22
9. To distrain for Highway Rates, _____	60	28
10. For Forfeiture for Statute Work, _____	60	29
11. For Carman riding on Cart, _____	60	31
		<i>Warrant,</i>

The TABLE.

<i>Warrant.</i>	<i>Ch.</i>	<i>St.</i>
12. For the same in Default of Distress, ———	60	32
13. For letting Horses avoid a Turnpike, ———	60	35
14. Of Distress for Poor-Rate, ———	59	25
15. For refusing Office of Scavenger, ———	60	38
16. For Scavenger refusing to account, ———	60	39
17. For Scavenger not bringing Carts, ———	60	44
18. To levy Scavengers Rates, ———	59	16
—————	60	45
19. For not hanging out Lights, ———	60	46
20. Against Sabbath-Breakers, ———	31	4
21. For not coming to Church, ———	31	5
22. For using a Trade on Sunday, ———	31	7
23. For travelling on Sunday, ———	31	8
24. For Disturbance at Church, ———	31	12
25. Against Churchwardens for not fixing Stop- blocks, ———	31	13
26. For Engine-keeper for 30 s. ———	31	14
27. For laying Dirt, ———	60	33
28. To levy Forfeitures for not coming to Church, ———	31	6
29. To relieve a poor Person, ———	34	6
30. Against an idle and disorderly Appren- tice, ———	35	53
31. Against an Apprentice for leaving his Master, ———	35	54
32. Against a Master abusing his Appren- tice, ———	35	55
33. For refusing to take an Apprentice, ———	35	57
34. Against reputed Father of a Bastard be- fore its Birth, ———	37	13
—————	37	19
35. Summons to the same after the Birth, ———	37	24
36. To cause Father and Mother of Bastard to appear, ———	37	23
37. To apprehend the Father of a Bastard, ———	37	24
38. To give Notice to a Father of a Bastard, ———	37	24
39. To commit the Father of a Bastard, ———	37	15
—————	37	33
40. To a Constable to make a Tax for re- pair of a Bridge, ———	60	26
41. To levy Penalties on Scavengers, ———	60	38
—————	60	43
—————	60	44
42. To a High Constable to make a Search, ———	91	17
43. For selling Ale without Licence, ———	64	2
<i>Watch in London,</i> ———	61	65, &c.

Watch,

The TABLE.

<i>Watch,</i>	<i>Ch. s.d.</i>
2. In several Out-Parishes, _____	61 58
<i>Watchman killed, his Executor to have forty } Pounds,</i> _____	61 57
2. Constable's Duty about the Watch, _____	61 54
_____	93 1, 8 ^{rs} .
<i>Weights and Measures,</i> _____	94 0
<i>Whores committed to the House of Correction,</i> _____	32 52
_____	37 37
<i>Workhouse for Poor,</i> _____	57 0
2. May be set up by Parishes, _____	57 6

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